

PATHWAYS FORWARD FRAMEWORK

A Relationship-based Approach to
Land Securement, Stewardship,
and Shared Responsibility

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Prepared For:

**THE GREENBELT
FOUNDATION**

*Developed in
Collaboration By:*



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The Pathways Forward: Framework Outline

A relationship-based approach to land securement, stewardship, and shared responsibility.

Overview

This Framework provides a practical and scalable set of tools that organizations and partners can use to guide future land donations, purchases, severances and easements for trail securement. It helps clarify how to identify appropriate lands, recommendations on how to navigate complex legal and policy considerations, and how to engage respectfully with Indigenous Communities throughout the process.

The following sections outline the original project vision, processes, relationships, and lessons learned that inform and led to the overall Pathways Forward Framework.

1. Case Study: The Story of the King Land Donation

In 2023, the King Land Project began with a clear and shared vision. As a collaborative team, Oak Ridges Moraine Land Trust (ORMLT) and Mno Aki Land Trust (MALT) set out to apply a Two Eyed Seeing approach to land securement along the Oak Ridges Moraine Trail in King City.

Building on earlier research, relationship building, and framework development, the intention was to move from theory into practice by securing a donated property along the Trail. This initiative, referred to as the King Land Securement Pilot, was designed to demonstrate how Indigenous and Western conservation approaches could work together in real time and to offer a model that could inspire other landowners to consider land donation as a meaningful legacy.

At the outset, the project was structured to move through land assessment, baseline environmental work, agreement drafting, and land transfer, with the goal of establishing long term stewardship of a property identified as special, unique and establish an new offroad connection to the Greenbelt Trail. The work was to be done in close collaboration with landowners, Indigenous Knowledge Holders, and community partners. Where needed, municipal partners would support trail severances to ensure permanent protection of the corridor. The process was intended to align with the Federal Ecological Gifts Program and to be fully documented as a pilot that could inform future land and trail securement efforts using a Two Eyed Seeing approach.

As the project progressed, it became clear that the work unfolding around the King property was about far more than a single land transaction. Through conversations, site visits, and early engagement, the team found itself navigating the complexity of people, relationships, land priorities, and tensions. This experience surfaced deeper questions around ownership, access, legacy, intentions, and responsibility. As Mary Boyden and Becky Big Canoe reflected, “We

were meant to learn about King, the complexity of people and relationships, land priorities and tensions. When we approach it from a place of relations, it is not just a business transaction.”

While the King land donation is not moving ahead at this time, the work has not stopped. Instead, the project shifted in an important and necessary way. Following discussions with the Greenbelt team and approval of a revised project timeline extending to May 2026, the focus moved toward community engagement, consultation, legal exploration of land securement pathways, and the development of a shared framework. The insights emerging from the King Land Project made it clear that what was being created was not only a pilot for one property, but the foundation for a scalable and adaptable approach to land securement that could be reviewed, guided, and strengthened by First Nations and informed by concurrent work of other groups.

This shift has led to the creation of the *Pathways Forward Framework*. Drawing from early lessons learned, the framework is being developed as a bridged approach that brings together Indigenous and colonial systems, while centering Indigenous perspectives, governance, and responsibilities to land. The team has completed a legal review of seven land securement scenarios, along with a *What Lands and Why* assessment process to support decision making. Core sections of the framework are now in development, including respectful engagement practices, decision making criteria, and parameters for how Indigenous Knowledge can be shared, protected, and governed.

At the same time, training for non Indigenous and Indigenous team leads focused on OCAP principles related to Ownership, Control, Access, and Possession Ownership and ethical knowledge sharing continues. Archaeological and Indigenous legal considerations connected to land and trail development were completed. An engagement proposal was submitted to an Indigenous Champions group, inviting their review and guidance once a preliminary draft of the framework is complete. This review process is intended to support community led input and ensure the framework reflects lived experience, rights, and responsibilities.

What began as a land and trail securement pilot has become something broader and more lasting. *The Pathways Forward Framework* is an outcome of listening, learning, and adjusting course. It reflects the understanding that land securement is not only about protecting spaces, but about building and maintaining relationships, honouring knowledge systems, and creating pathways forward that are grounded in respect, responsibility, and reciprocity. The King Land Project remains central to this work, not as a completed transaction, but as the place where the deeper learnings truly began.

Through this work, we found ourselves unpacking and re-examining core concepts such as ownership and land access, legacy, intentions, and responsibility. As these conversations deepened, Indigenous leaders offered important guidance, noting that Two Eyed Seeing and braiding approaches, while valuable, can still unintentionally place colonial systems in the foreground. We were encouraged instead to move toward a bridged approach, one that more intentionally shifts how decisions are made, centres Indigenous perspectives from the outset, and creates space for Indigenous and Western systems to meet without one dominating the other.

Case Study Voices & Perspectives

1. Interview: Becky Big Canoe

a. Why Mno Aki Land Trust? Why now?

My journey with land trusts began when I met Sonia (Molodecky) while engaging with the Reconciliation through Engineering initiative of University of Toronto. I was interested in building houses in a natural way that maintains a connection to the land and allows for food preservation. The displacement of First Nations peoples from land is an outcome of our history with Canada, created by issues that include Missing and Murdered Indigenous Women, Indian Act, resource extraction, and broken treaties. I understand the leadership role of Grandmothers regarding food, medicines, teachings, and all interactions with the land. To be able to establish more control over lands for use by Indigenous Peoples, establishing land trusts governed by Grandmothers evolved as a peaceful way to manage lands while working with Canadians.

In my opinion, Grandmothers should be able to simply claim lands and make decisions about it. This is obviously not the case in Canada, but the land trust model allows for Grandmother leadership within our current system. Indigenous Conservation is a worldview that sees human beings in relation to all other beings: plants, animals, elements. We are meant to use the land and to be responsible for it since it offers us life. The Land will let us know how we should use it, whether for food, shelter, or to teach us. As we continue to experience climate change, economic growth, and growing urbanization it is necessary for us to ensure that land is available for us to engage with, according to our ways of knowing. These ways of knowing are meant to be protected by Grandmothers.

b. The King Property: What has it taught us?

MALT's relationship with the King property has evoked a learning struggle. Our own lack of knowledge of land trust (administratively) and our differing views of conservation (world views), resulted in our board's capacity development which is ongoing. We attracted a network of advisors and teachers which has not only allowed us to begin to learn the land trust process and regulatory framework, but also to support the emergence of an Indigenous Land Trust movement across the country. In spite of the changing dynamics all around us on many levels, we have elected to continue to engage with the land trust model as a preferred means to supporting land access and land use for displaced Indigenous peoples. Land for learning, experiencing, healing, and conserving will be negotiated and maintained by ensuring MALT and future land owners are in agreement about the governance, access and use of lands being donated. The key concept of diplomacy vs ownership in these relationships is necessary. Land donations that are made free and clear are not taken back when we operate from this view.

The concept of Land Back has also been clarified for MALT through the relationships built by the King property. If we were all aware of our history in Canada, we would have been able to fix our relationships sooner. We are learning our history now though, and we are all becoming more interested in working together from our strengths. Let the option of land trust be part of our new story together. MALT Land Trust is working towards a national education and awareness campaign to bring this shared solution to Indigenous people and Canadians.

c. Two-Eyed Seeing Foundations

Two Eyed Seeing brings world views together as collaborators and partners. It does not combine these knowledges into a new, distinct knowledge. Science and Indigenous Knowledge are unique from each other and are able to respect each other. When Science and Indigenous Knowledge look at a piece of land and ask, “what do we want from this resource?”, we will find answers that benefit not only ourselves in the now time, but also the future generations. An example we might consider is whether or not to spray. We consider the collateral and cumulative effects around the property, as well as the science and economic benefits to make a decision. The two-eyed seeing approach offers more answers to “Are there better ways?”

Our options for a pathway forward, once we understand our history and the benefits of working together, will lead to better shaped policy and less performative responses to the Truth and Reconciliation Commissions calls to action. This benefits all Canadians and takes its leadership from the Greenbelt’s engagement and reciprocal relationship with the Williams Treaty First Nations.

“If knowing the real story of what has taken place historically was taught from the beginning of understanding, then we wouldn’t be in the situation we are now” - Becky Big Canoe

Learning must be reciprocal. To support ongoing reflection and learning, Appendix E includes a *Facets* research article co-authored by Becky Big Canoe that shares key lessons and insights from past Two-Eyed Seeing experiences and collaborative work with Indigenous Peoples.

2. Interview: Sonia Molodecky

The King property is centrally located between three (3) First Nations in the Williams Treaty area. It is located on the historic and strategic Carrying Trail, with significant history and documented archeology. Establishing a land trust on this site offers an opportunity to tell the history and story of the Greenbelt from the perspectives of the original peoples of that place and in their own voices.

Connecting the stories of the First Nation people in this location where it is 1) accessible, and 2) within a huge population center of an affluent region of Ontario, is a model that makes reconciliation available to a huge population. By entrusting this story to MALT

Land Trust, the result would be a true narrative in the interest of sharing and learning within the crux of the first nations of the region. Again, this is a model for Canada to embrace around the country.

The King Property is a location for shared responsibilities and mutual learning. Because of the relationships built on this property, new networks are being established that are creating the foundation for a shift in the way the Greenbelt is understood and how it will be protected into the future. Redefining the rules and accountabilities will mean that the timelines we are used to may be altered, but the outcome will be a breakthrough in the sustainability of our human and resource investments.

2. What Lands and Why

The following sections provide tools, considerations, legal pathways, and Indigenous perspectives that guide land selection and securement.

Relationships Between People and the Land

The foundation of Indigenous-led land prioritization begins with understanding relationships. Before decisions can be made about land securement, stewardship, or conservation, it is necessary to ask: *What lands? Why these lands?* The answers to these questions extend far beyond ecological value or development pressure alone. They are rooted in relationships, responsibilities, histories, and ongoing connections between people, land, waters, plants, animals, and spirit.

Within this framework, land is not viewed as an isolated asset or commodity, but as part of an interconnected system of relationships that must all be considered together. These relationships include those between the land and the people, the people and the land, the animals and the land, the people and the animals, the plants and the animals, and the broader ecological and cultural systems that connect them all. Each relationship carries meaning, responsibility, and teachings that help inform how land should be cared for and protected.

This relational approach also requires consideration of the broader context surrounding a property or landscape, including treaty relationships, Indigenous rights, cultural histories, active land use, governance structures, legal considerations, and the intentions behind land securement efforts. Understanding these layers helps move the conversation beyond land acquisition alone and toward a more holistic and respectful approach to stewardship and decision-making.

As Becky Big Canoe reflected during this work:

“When we approach land from a place of relations, it is not just a business transaction.” - Becky Big Canoe, Georgina Island

This insight became a guiding principle throughout the development of the Pathways Framework and continues to shape how land prioritization and securement are approached within this model.

Walking the Land

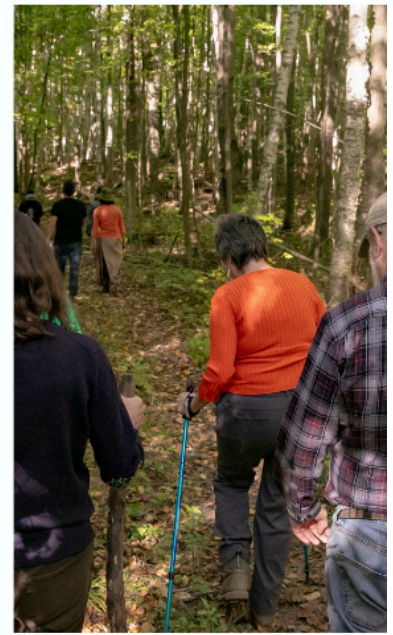
Walking the land is an essential first step within the Pathways Framework. Before formal assessments, reports, or land securement discussions begin, there must first be an opportunity to spend time on the land, build connections, and begin forming relationships with the place itself and with the people connected to it. Walking the land creates space for listening, learning, observing, and understanding in ways that cannot be achieved through mapping, documentation, or technical assessment alone.

Within this framework, walking the land serves as a foundation for future assessment and decision-making. It allows participants to better understand the unique ecological systems, cultural significance, histories, community relationships, and responsibilities connected to a property or landscape. It also creates opportunities for stories, teachings, and knowledge to be shared directly through experience and presence on the land.

This process encourages a broader understanding of value and significance beyond conventional conservation criteria. Through walking the land, participants may begin to recognize relationships between waters, plants, wildlife, medicines, migration routes, gathering areas, ceremonial spaces, historical use, and community connections that may not otherwise be visible within traditional assessment processes.

Walking the land also requires approaching knowledge-sharing with care and responsibility. Indigenous Knowledge shared during land walks, gatherings, conversations, or cultural teachings must be treated respectfully and in accordance with OCAP principles. Participants and organizations involved in this work must clearly understand their responsibilities regarding the collection, use, storage, sharing, and protection of information shared by Indigenous Peoples and communities.

Importantly, walking the land is not intended to function as a one-time consultation activity or procedural requirement. Rather, it is part of an ongoing relationship-building process that helps establish trust, reciprocity, and a deeper understanding of the land before decisions are made about its future stewardship or protection.



King Land Gathering and ‘Walking the Land’, October 2024

Photo Credits: McFadden and Atkinson

The development of this section was also informed by ongoing review, discussion, and training using the publication *Respect and Responsibility: Integrating Indigenous Rights and Private Conservation in Canada, 2021* co-written by our project advisor Ian Attridge.

This report is intended to help readers understand the current state of law and policy concerning what are often still referred to as “Aboriginal rights” within Canadian law, or more appropriately, as “Indigenous rights” in accordance with both Indigenous preferences and international legal conventions, as they apply to the conservation of private lands.

This resource helped guide conversations around Indigenous rights, relationship-building, private conservation practices, and the responsibilities associated with land stewardship and engagement. Please see Appendix F for the full publication reference.

Land Considerations

The following considerations emerged through discussions with Indigenous advisors, Knowledge Keepers, project partners, and community members throughout the development of the Pathways Framework. These considerations are intended to support a broader understanding of land significance when exploring potential land securement opportunities, trail connections, stewardship areas, or conservation priorities.

Importantly, these considerations are not intended to create a hierarchy of value or importance. Indigenous perspectives shared throughout this project emphasized that lands, waters, plants, animals, and ecosystems all hold purpose, relationships, and responsibilities. The intent of this framework is not to rank one landscape or feature above another, but rather to encourage a

more holistic understanding of the interconnected relationships that contribute to the significance of a place.

The following *Combined Land Considerations* by category may help guide land walks, conversations, assessments, and future stewardship discussions:

Area of Consideration	Examples and Reflections
Food and Medicine Growing Potential	Areas that support food sovereignty, medicines, harvesting, seed saving, or traditional growing practices.
Traditional Materials and Resources	Availability of culturally important materials such as birch, cedar, spruce, balsam, medicines, berries, or other traditional resources.
Habitat for Culturally Significant Species	Areas connected to species that hold cultural, ceremonial, ecological, or teaching significance.
Ceremonial and Knowledge Sharing Spaces	Areas connected to ceremony, gathering, teaching, storytelling, cultural practices, or opportunities for intergenerational knowledge exchange.
Unique Bioregions and Ecosystems	Wetlands, forests, grasslands, waterways, migration corridors, rare ecosystems, or ecologically distinct areas.
Seasonal and Land-Based Uses	Areas used or valued seasonally for gathering, harvesting, teaching, travel, ceremony, or community activities.
Medicinal and Ceremonial Ecosystems	Ecosystems that support culturally important medicines, ceremonial practices, or traditional healing relationships.
Acknowledged Sacred Sites and Cultural Areas	Areas recognized as sacred, historically significant, spiritually important, or culturally sensitive.
Plants, Animals, and Natural Relationships	Presence of medicines, culturally important flora and fauna, keystone species, pollinators, wildlife habitat, and interconnected ecological relationships.
Historical and Ongoing Community Connections	Areas connected to treaty relationships, travel routes, gathering places, traditional use, oral histories, or ongoing community relationships.

For this Framework, these considerations are intended to complement ecological assessments, archaeological reviews, and land securement evaluations by ensuring that cultural relationships,

responsibilities, and Indigenous perspectives remain part of the conversation throughout the process.

3. Knowledge Sharing & Data Governance

This work emerged as an instrumental learning opportunity for ORMLT and other land trust partners to deepen their understanding of where Indigenous perspectives, worldviews, and foundational principles come from. It helped create an important bridge to knowledge, offering both context and actionable ways to apply the Pathways Framework through a relationship-based approach to land securement.

Exploration of the Concepts of Ownership, Land Access, Legacy, and Intentions that surfaced during the project.

A key part of this learning journey included completing the *Fundamentals of OCAP* training, which provided a clear understanding of the principles of Ownership, Control, Access, and Possession (OCAP) and how these principles affirm First Nations' inherent rights to govern information about their peoples, lands, and communities. This learning also highlighted the historical misuse of Indigenous data and reinforced the importance of ethical, consent-based information practices grounded in self-determination, trust, and respect.

As this work evolved, it became increasingly clear that concepts such as ownership, land access, legacy, and intentions must be reconsidered through a broader and more relational lens. Moving forward, land securement efforts connected to the Oak Ridges Moraine Trail must recognize the necessity of *free, prior, and informed consent*, the value of transparent data and knowledge-sharing agreements, and the responsibility of all involved organizations to ensure that First Nations retain decision-making authority over information, relationships, and lands that affect them.

By integrating Indigenous ways of knowing alongside Western conservation science, OCAP provides a governance framework that ensures Indigenous knowledge is respected, protected, and not extracted or misused during land securement processes. This includes how ecological data, cultural knowledge, mapping, monitoring information, and stewardship records are gathered, managed, shared and stored.

In practice, applying OCAP principles within this framework means co-developing land securement strategies, conservation easements, and long-term stewardship plans with Indigenous and First Nations as equal partners. It requires ensuring that Indigenous communities retain authority over how their knowledge, histories, and data are received, interpreted, used, stored, and shared in support of land protection efforts. Clear and transparent data-sharing agreements are essential, establishing mutual understanding around ownership, permissions, access, storage, and, where appropriate, the return or destruction of materials.

Embedding these principles into the land securement process strengthens trust, supports reconciliation, and contributes to more durable, respectful, and culturally grounded conservation outcomes across the Oak Ridges Moraine and Greenbelt.

As organizations engage with First Nations and receive cultural, historical, ecological, or community-held knowledge, the following questions should be considered as part of ethical and responsible practice:

Key Questions When Receiving and Handling Information from First Nations

- Have we clearly acknowledged that First Nations retain ownership of the knowledge, information, and materials being shared?
- Have we received explicit permission to collect, digitize, store, or share this information?
- Do we know who holds the appropriate authority to provide consent or permissions on behalf of the community?
- Have we discussed and documented expectations regarding access, use, sharing, storage, retention, and, if requested, destruction or return of digital or physical materials?
- Are our information management practices aligned with OCAP® principles and the community's specific protocols and expectations?
- Have we created space for ongoing dialogue and consent, recognizing that permissions and relationships may evolve over time?

Approaching information sharing with care and accountability is not simply an administrative step; it is an essential part of building respectful relationships and ensuring that Indigenous knowledge is protected, honoured, and stewarded according to the wishes of the communities who hold it.

4. The Four Elements Approach

The Pathways Framework recognizes that successful land securement begins long before legal agreements, assessments, or stewardship plans are developed. It begins with relationships. Those with the land, with the people connected to the land, and with the responsibilities that arise from those relationships. The Four Elements has been developed to help ground land securement practices in ceremony, relationship-building, Indigenous worldviews, and circular ways of knowing and decision-making.

Throughout the King Land Project, project partners learned that creating meaningful and lasting conservation outcomes requires more than technical expertise or transactional processes. It requires gathering together, sharing stories, listening to one another, and building a collective understanding of the land and its significance. As Becky Big Canoe reflected, *“This is the basis of consultation. Sharing the stories and knowledge of the people who came together.”*

The framework draws inspiration from experiences during the King Land Project, including the Land Opening gathering, where project partners, community members, and landowners came

together around ceremony, fire, storytelling, and shared meals. The presentation of a Ribbon Shirt, the honouring of the family's stewardship of the land, the sharing of tea and feast foods, and time spent walking the property all contributed to a deeper understanding of the relationships that existed before any discussions of land securement occurred. These experiences reinforced the importance of approaching land conservation not simply as the protection of a place, but as the nurturing of relationships that connect people, lands, waters, plants, animals, and future generations.



King Land Opening, October 2024

Photo Credits: McFadden and Atkinson

Our Project Journey

The Land Opening

1. Gathering and Ceremony
2. Fire and presentation of the Ribbon Shirt
3. Honouring the gift of land and history of stewardship
4. Feast, tea, and storytelling

Building Relationships with the Land

1. Walking the land, photo/video reflections, fire circle, feast and storytelling

2. Key insight:
“This is the basis of consultation—sharing the stories and knowledge of the people who came together.” – Becky Big Canoe

Indigenous Knowledge Holders

1. Discussions with Nancy Rowe, Elder from New Credit First Nation to learn about the historical context of the land, sharing of stories
2. Conversations and Interviews with members of Williams Treaty First Nations
3. Conversations with other Land Trusts members, research of best practices, document review
4. Conversations and Interviews with MALT and ORMLT project advisors, board and team members.

Relationship Building through Worldview Differences

1. Dialogue between land owner and MALT Grandmother Council regarding land use expectations and access to land
2. Negotiations to solve differences in perspectives
3. Resolution to give the relationship more time to solve its differences before proceeding with acquisition.

The Circular Approach



This Circular Approach to land acquisition from an Indigenous-led process presents itself as a circle. Beginning with the vision of sharing responsibility for lands in the Greenbelt between all stakeholders, it moves to acknowledging all the relationships that exist when decisions about land are being made, into establishing frameworks that serve all rights holders, before being able to move forward with confidence that land acquisitions will continue to be governed in the best interests of the land and all its constituents. As a circular model, it continues in its cycle as new information, considerations, and dynamics become apparent. It takes into consideration that *change is the constant* and with change may come the need to renew relationships.

This approach evolved through Mno Aki's relationship with the King property and with our growing capacity in the realm of land trust from an Indigenous perspective. As stated by Mary Boyden, "Relationships form Indigenous perspectives - connections between Land, Water, People, Air and all Nature". This circular model encourages us to continually revisit

relationships, responsibilities, knowledge and intentions throughout the land securement journey.

This approach also recognizes the importance of understanding the history of a place and the Nations connected to it. Learning from Elders, Knowledge Keepers, and local communities helps situate land securement efforts within the broader context of treaty relationships, cultural histories, and ongoing stewardship responsibilities. For this reason, the framework recommends working within treaty territories and engaging First Nations leadership, Knowledge Keepers, community members, and rights holders as partners throughout the process.

The Four Elements Approach is intended to complement legal, ecological, and planning processes by providing a foundation rooted in respect, reciprocity, responsibility, and relationship. It offers a way to ensure that land securement efforts remain grounded in the values and connections that give meaning to the land itself.

In our story with the King property, it was in the third element of the approach regarding world views and establishing frameworks that respect them, where we needed to make the decision to take a step back from the acquisition to assess our own capacity, perspectives, goals and accountabilities before continuing the dialogue. Instead of seeing this as a failure we have been able to forge new relationships and to re-establish our priorities as a land trust.

5. Opportunities for Land Securement

Through our work, consultations, and research, we identified seven potential scenarios for trail securement. These pathways have been further refined to include opportunities for Indigenous participation, feedback, cultural review, and ongoing engagement at key stages of the process. Each scenario has been carefully reviewed through both Indigenous and non-Indigenous legal perspectives to better understand the legal requirements, considerations, and implications associated with its implementation.

The following section provides a summary of these seven land securement opportunities, including key descriptions and considerations to support informed decision-making.

More detailed implementation checklists, engagement tools, and supporting resources are included in Appendix A to guide organizations and partners through the practical steps of each pathway.

Summary of the 7 Land Securements Scenarios Available for Trail Securement

Scenario 1: Fee Simple (FS) Land Donation through the Ecological Gifts Program

A landowner donates full ownership of a property to a land trust under the Ecological Gifts Program (EGP). The land trust assumes long-term ownership and stewardship responsibility, ensuring permanent protection of natural features while securing the trail corridor. This scenario

may be of interest to First Nations where fee simple ownership enables co-stewardship, Indigenous-led land management, cultural access, and potential land return models, including future transfer to or shared governance with an Indigenous Land Trust. While EGP provides strong ecological protection and tax benefits, federal program requirements may limit flexibility unless Indigenous interests are intentionally embedded in governance and stewardship agreements.

Scenario 2: Fee Simple Trail Section Donation (Non-Ecological Gifts Program)

A landowner donates only the portion of their property required for the Trail, without using the EGP. The land trust gains full ownership of the trail corridor, securing permanent public access and stewardship. This approach may support Indigenous involvement in trail planning, cultural interpretation, and place-based education, and offers greater flexibility to incorporate Indigenous stewardship practices and agreements reflecting Treaty relationships, given the absence of federal EGP constraints.

Scenario 3: Fee Simple Purchase

The land trust purchases a full property outright to protect natural features and secure the Trail. This provides the highest level of control over land use and trail management but requires significant upfront capital and long-term stewardship capacity. Fee simple ownership may be of interest to First Nations where it creates pathways for future shared ownership, co-management, or land transfer, particularly for lands of cultural, ecological, or historical significance, when paired with intentional relationship-building.

Scenario 4: Fee Simple Trail Section Purchase

The land trust purchases only the land needed for the Trail corridor, reducing acquisition costs while ensuring permanent trail access and protection. This scenario may be of interest to First Nations where it supports secure access to culturally significant travel routes, collaborative stewardship of the trail corridor, and opportunities for Indigenous-led interpretation, though broader land-based opportunities may be limited by the narrower footprint.

Scenario 5: Conservation Easement Agreement (CEA) via the Ecological Gifts Program

A landowner retains ownership but grants a Conservation Easement under the EGP that permanently protects natural features and secures trail access. This option balances private ownership with long-term conservation and provides tax benefits to the landowner, while requiring ongoing monitoring by the land trust. This scenario may align with Indigenous interests where easement terms explicitly recognize Treaty Rights, cultural access, and Indigenous participation in stewardship and monitoring, though federal EGP requirements necessitate careful drafting to ensure flexibility.

Scenario 6: Conservation Easement Agreement or Trail Easement Donation (Non-Ecological Gifts Program)

A landowner donates a conservation or trail easement outside of the EGP framework, securing long-term trail access and/or ecological protection. This approach offers greater flexibility in easement terms and enforcement, and may be of interest to First Nations where it allows for

recognition of Indigenous law, knowledge systems, access rights, and stewardship roles, supporting relationship-based agreements without federal constraints.

A sample template for a *Conservation Easement Agreement or Trail Easement* has been included in Appendix C.

Scenario 7: Purchase Land → Sever Trail Section → Sell Remainder to Offset Cost

The land trust purchases a larger parcel, legally severs the portion required for the Trail, and sells the remaining land to recover part of the acquisition cost. This approach can be financially strategic while securing permanent trail protection, but requires careful planning and regulatory approvals. It may be of interest to First Nations where the retained trail section or remaining lands support shared stewardship, cultural access, or future Indigenous ownership, and where acquisition is explicitly linked to reconciliation and land-based relationship outcomes.

Land Securement using the Ecological Gifts Program:

Any land securement undertaken through the Ecological Gifts Program requires strict compliance with all federal requirements, appraisal standards, reporting obligations, and administrative procedures established under the *Income Tax Act* and related regulations. Non-compliance, whether through inaccurate or inflated appraisals, failure to disclose relevant information, unauthorized changes to the property, or any contravention of program rules, may result in significant penalties. These include a penalty of up to 50% of the tax credit or deduction claimed if the ecological gift is disposed of or the conservation covenant is breached without authorization from Environment and Climate Change Canada (*Income Tax Act*, s. 207.31), a 25% gross-negligence penalty for false statements or omissions (s. 163(2)), and a penalty of up to 100% of any overstated value where an appraisal is intentionally inflated (s. 163(2.2)). Additional consequences may include reassessment of tax benefits, revocation of the ecological gift certification, and repayment of all tax advantages received. Full adherence to the Program's requirements is therefore essential to avoid substantial legal and financial consequences.

Ecological Gift Program Appraisals

When working with an accredited appraiser for a valuation of a property donation (easement or fee simple) to be submitted under the Ecological Gifts Program, it is essential to evaluate whether the report meets the Program's standards for accuracy, defensibility, and professional rigor. The following considerations outline the key elements that must be assessed to determine whether an appraisal is reasonable, appropriate, and sufficiently supported. These criteria help ensure that valuation conclusions are based on sound methodology, relevant evidence, and a clear understanding of the property's characteristics, constraints, and highest and best use. For more information please visit: [Ecological Gifts Program : guidelines for appraisals.:](#) [CW66-392/2019E-PDF - Government of Canada Publications - Canada.ca](#)

Considerations for the Appraisal: Reasonable/Appropriateness Review

1. *Consideration of the situation, appraisal techniques, influencing factors, evidence presented, etc.*
2. There are no unsupported assumptions (such as assumed access or zoning changes)
3. There are no hypothetical conditions, except where necessary for a reasonable analysis of the property

4. Title restrictions, zoning and other land use controls have been identified
5. Valuation approach(es) are explained and supported
6. Conclusions regarding highest and best use are well supported
7. Adequate number of comparable sales are presented to draw conclusions about the value of land in a particular area
8. Comparable sales are actually comparable to the subject property:
 - a. similar in size
 - b. same highest and best use
 - c. similar attributes such as access, services, view, waterfront, frontage, forested or farmland etc.
9. The differences between the comparable sales and subject property must be explained and accounted for in an appropriate manner, e.g. quantitative and/or qualitative adjustment, ranking, weighting, etc.
 - a. Include a map/aerial imagery illustrating location and shape of each comparable
10. Information is provided regarding the appraiser's qualifications, market knowledge and experience
11. In the case of an update, provide explanation and/or evidence of what was done to verify that there were no material changes to the property since the original inspection, e.g. the property was revisited, the donor/recipient were interviewed, etc.
12. Is the report a well written comprehensive account of the subject property and area? Or is it poorly written (copy and paste errors) and contains poor resolution maps or photocopied real estate and financial reports?
13. Are the appraiser's conclusions reasonable? Are they supported? Do they make sense when you consider what you know about the subject property and its location?
14. Do the conclusions follow naturally from what is written in the body of the report?

Legal Considerations: Summary of Legal Pathways for Each Scenario

This section is informed by consultations and interviews with Trish Cowie - Indigenous Legal Counsel, Burgandy Dunn - Legal Counsel, and Aileen Barclay - Director of Conservation and Operations, Oak Ridges Moraine Land Trust.

As this framework explores pathways for land securement within Ontario, it is essential to recognize that each legal scenario exists within a broader context of Indigenous rights, treaty relationships, and colonial legal systems. While the legal mechanisms outlined in this framework can support conservation and stewardship goals, they must also be approached with humility and an understanding of their limitations. Land acquisition, title transfer, and conservation agreements are rooted in colonial systems that do not necessarily align with First Nations laws, treaty understandings, or cultural relationships with land.

This tension must be acknowledged openly. From many Indigenous perspectives, land is not something to be owned, but something to which people belong and for which they hold responsibilities as caretakers.

Efforts to secure and protect land through existing legal tools may be well intentioned, but they do not replace or diminish Indigenous rights, title, or responsibilities to those lands and waters. Rather, this work should be understood as part of an evolving effort toward greater inclusivity, respect, and reconciliation within the constraints of existing systems.

The following considerations emerged through legal consultation and are recommended as guiding principles across all land securement pathways.

Terminology and Rights Holders

The use of terminology, including the broad term *Indigenous*, may require careful consideration depending on the regional and political context. In Ontario, significant tensions currently exist regarding distinctions between First Nations and Métis rights assertions. The area of focus for this framework lies within the Williams Treaties territory and includes the treaty relationships of the Mississaugas of the Credit First Nation. Wherever possible, the voices and perspectives of recognized rights holders within the specific treaty territory should guide engagement, consultation, and policy development.

Recognizing Treaty Territories and First Nation Rights

First Nation rights and treaty relationships should be considered from the earliest stages of every land securement process, including during initial property identification and assessment.

Recommendations include:

- Identifying and documenting the treaty territory associated with each property under consideration.
- Identifying the closest First Nation communities and their relevant consultation departments.
- Incorporating treaty and territorial mapping into all seven land securement pathways.
- Using recognized treaty maps and community-validated territorial boundaries, rather than relying solely on generalized public mapping tools.
- Where territories overlap, ensuring all relevant First Nations are acknowledged and engaged appropriately.
- Considering whether First Nations wish to receive early notice of pending or potential land securement opportunities.

Environmental and Cultural Significance

Indigenous relationships with land and water are deeply connected to spirituality, identity, and cultural continuity. Unlike Western conservation frameworks, which often prioritize or rank lands according to ecological metrics, Indigenous perspectives may understand all lands as inherently significant and often emphasize belonging to the land, reciprocal responsibilities, and relational stewardship rather than possession or control.

For example:

- Areas identified by Western science as containing “invasive species” may be approached differently through an Indigenous lens, prompting questions such as *Why is this species here? What is its role or message?*
- The cumulative effects of development across southern Ontario increase the importance of protecting all remaining natural spaces, particularly wetlands.
- Protecting ecological systems is directly connected to protecting Indigenous rights, cultural practices, and community wellbeing.

Historical and Political Context

The historical relationship between Canada, Ontario, and First Nations, including loss of indigenous lands, language loss, and disruption of cultural practices, must be recognized as essential context for this work. In some cases, traditional knowledge, place names, and cultural histories may be difficult to recover or may have been permanently lost. This reality reinforces the need for respectful engagement and careful stewardship of any knowledge shared.

Indigenous Engagement and Archaeological Review

Indigenous Values Assessments should not be treated as a one-time step. It may need to be revisited throughout the land securement process, particularly following archaeological assessments or when new information emerges.

Recommendations include:

- Integrating Indigenous cultural engagement and valuation at multiple stages of each securement pathway.
- Ensuring archaeological findings are reviewed through both technical and Indigenous cultural lenses.
- Creating opportunities for First Nations to guide how culturally significant findings are interpreted and addressed.

Knowledge Sharing and Culturally Significant Species

First Nations may choose to share information related to culturally important keystone species, sacred areas, or ecological indicators as part of the engagement process. Such information should only be requested and received within strong, clearly defined data-sharing agreements aligned with OCAP principles.

These agreements should ensure:

- Confidence that information will be stored, protected, and used respectfully.
- Clear permissions regarding access and future sharing.
- Community control over how sensitive ecological or cultural information informs land securement decisions.

Archaeological Review and Walking the Land

Walking the land emerged as a foundational part of the Pathways Framework and the King Land Project process. Beyond ecological assessment, walking the land created opportunities to better understand the relationships, histories, uses, and meanings connected to a place. Through these site visits and conversations with the landowner and project partners, it became clear that certain areas of the property held unique personal, cultural, ecological, and historical significance that the landowner hoped to protect. This experience reinforced the importance of approaching land securement not only as a technical process, but as a relational and place-based practice shaped by multiple perspectives, values, and intentions.

One of the key learnings from the King Land Project was the importance of integrating archaeological review early in the land securement process. Archaeological assessments can provide valuable insight into historical and cultural land use while also helping identify areas of potential significance to First Nations communities. At the same time, discussions throughout this project highlighted that archaeological work should not be approached solely as a regulatory requirement, but as part of a broader process of respectful engagement and shared stewardship.

As part of this work, a Phase 1 Archaeological Review was completed to support future planning considerations. A detailed summary of this work is included in Appendix B: *Planning for Archaeology Report*.

Consultations and discussions throughout the project identified several important recommendations and considerations for future land securement initiatives:

- Archaeological review should be introduced early within all land securement pathways, and ideally as part of the preferred trail route planning and considered alongside environmental, cultural, and relationship-based assessments.
- Where possible, archaeological processes and reviews should include or be guided by First Nations participation and leadership.
- Engagement related to archaeological review should occur through appropriate Lands, Consultation, or Cultural Heritage departments within First Nations communities, recognizing capacity limitations and respecting existing community protocols.
- Project budgets should account for the costs associated with Indigenous engagement, archaeological review, and ongoing consultation processes.
- First Nations should be approached as rights holders, decision-makers, and regulators alongside provincial and federal authorities.
- Reports such as archaeological assessments, ecological studies, and environmental reports should be made available to First Nations communities where requested, with clear processes for respectful data sharing and storage.
- Organizations undertaking land securement work should consider maintaining accessible report databases or annual reporting processes that allow First Nations to review information collected within their territories as capacity and interest evolve over time.
- Data sharing practices related to archaeological and cultural information should align with OCAP principles and respect community expectations regarding access, ownership, storage, and future use of information.

The project also highlighted the importance of recognizing the differences that may exist between landowner intentions, active land use, ecological priorities, and Indigenous perspectives regarding the significance of a site. These conversations reinforced that understanding a property requires more than technical assessment alone. It requires listening, relationship-building, and creating space for multiple ways of understanding the land to inform future stewardship and securement decisions.

6. Community Review and Feedback

Recommendations and Next Steps

As part of this project, we received a summary report from sessions held with five of the seven Williams Treaties First Nations communities, with conversations facilitated and led by Ne'ikaanigaana Inc. This engagement formed an important part of the review process for the 7 Land Securement scenarios and the broader "What Lands and Why" considerations developed within the Pathways Framework.

Guidance was specifically sought from Elders and the Williams Treaties First Nations (WTFN) Champions Group to inform and strengthen emerging land securement pathways. Feedback focused on three key areas:

- Review of the seven land securement scenarios
- Reflections on combined land consideration criteria
- Recommendations for improving community engagement approaches

A detailed summary of this engagement is included in Appendix D: *Land Securement Engagement Summary Report*.

Feedback About Engagement

Through these discussions, important feedback emerged. A clear distinction was made between *consultation* and meaningful engagement. It was noted that there is growing fatigue and mistrust associated with consultation processes, particularly where past engagements have led to loss of land, limited outcomes, or unmet expectations. In contrast, relationship-building was identified as the necessary foundation moving forward. The emphasis was placed on the importance of creating space for ongoing dialogue, trust-building, and meaningful connection rather than transactional or one-time consultation processes.

This shift in emphasis also raised important questions for the next phase of the work, including:

- Do we need to step back and reassess our current approach(es)?
- Are there barriers within our process that are limiting meaningful engagement?
- How do land trusts ensure they are engaging in the right way, with the right people, at the right time?
- What is required to support better conversations that lead to informed and shared decision-making?

These reflections point to the need for continued learning and adaptation in how land securement processes are designed and implemented.

Insights on Community Engagement and Responsibility

In closing discussions, members of MALT reflected on experiences in other regions, noting that in some northern communities consultation has become a routine process with limited participation, often involving a small group of consistent voices. This raised an important question: *what else needs to happen to support broader and more meaningful community involvement?*

A key consideration is understanding who constitutes “your team” within community contexts. This may include Elders, Knowledge Keepers, local leaders, and individuals with lived experience and cultural credibility on the ground. Engagement must recognize that no single person speaks for an entire community, and that responsibility is collective, not individual.

It was emphasized that meaningful engagement requires offering space for all voices to be heard, while respecting community protocols for how decisions are made and who is involved in those processes. This reinforces the importance of relationship-based approaches that move beyond consultation toward sustained engagement, shared responsibility, and trust-building over time.

7. Elevating Indigenous Perspectives and Future Considerations

Throughout the development of the Pathways Framework, project partners identified opportunities to strengthen Indigenous participation, review, and shared decision-making across all stages of the trailand securement process. A consistent theme that emerged was the importance of building flexibility into governance structures so the framework can evolve alongside growing relationships, community interest, and First Nations capacity.

Within existing land trust processes, board approvals often represent key decision-making milestones. Discussions throughout this project highlighted the importance of considering how Indigenous voices and perspectives may also be included at these stages. This could include creating opportunities for First Nations representatives or advisors to participate in review processes where appropriate, or ensuring that additional Indigenous review and screening opportunities are built into each stage of the pathway alongside existing organizational approvals.

The project team also discussed the potential role of the Williams Treaties First Nations (WTFN) Champions Group as an advisory body that could help support ongoing review, guidance, and relationship-building throughout future trail and land securement initiatives. Ensuring that Indigenous review opportunities are prioritized at multiple stages of the process will help maintain flexibility and allow the framework to adapt as relationships deepen and capacity within Nations continues to grow.

Another key area of discussion involved the long-term stewardship of protected properties. Participants emphasized the importance of moving beyond traditional “management” language toward more relational approaches grounded in partnership and shared responsibility. As a result, consideration should be given to the development of co-management or “Relationship Plans” with interested First Nations wherever interest and capacity exist. These plans may evolve over time and could support future assertions of First Nations stewardship, governance, or co-management responsibilities as communities determine appropriate.

Additional recommendations and considerations identified through this work include:

- Providing notice and property acquisition updates to relevant rights holders throughout the land securement process.
- Creating additional opportunities for Indigenous review or cultural screening, particularly following the completion of archaeological, ecological, or environmental reports.
- Allowing flexibility within the framework to incorporate additional engagement or review steps as First Nations capacity and interest expand over time.
- Considering the use of covenants or agreements registered on title, where appropriate, that acknowledge Aboriginal title, rights, interests, or ongoing land use relationships.
- Exploring restrictive covenants where appropriate, such as limitations on severance or land-use changes without consultation or permission from relevant First Nations.
- Considering mechanisms such as Options to Purchase registered on title for the benefit of First Nations where appropriate and desired by the parties involved.
- Supporting ongoing collaboration with related initiatives and engagement work already underway through Greenbelt partners and First Nations communities to avoid duplication and build alignment.

This work reinforced that relationship-building cannot be treated as a single step within the process, but rather as an ongoing responsibility that must continue before, during, and after land securement occurs. Creating adaptable pathways for Indigenous participation, review, and stewardship will help ensure that future conservation efforts are more collaborative, respectful, and responsive to the rights, interests, and knowledge systems connected to these lands.

8. Summary of The Pathways Securement Process

While the process outlined below offers a starting point, it should be viewed as an evolving model rather than a fixed prescription. Ongoing guidance from First Nations communities, Elders, Knowledge Keepers, and the WTFN Champions Group will be essential to ensuring the process remains relevant, respectful, and effective for local implementation.

Throughout the development of this framework, participants consistently emphasized that relationship-building must come before action. As Becky Big Canoe reflected, meaningful engagement cannot begin with predetermined outcomes or requests. Communities must first understand the purpose, intentions, and potential impacts of a project before leadership engagement can be meaningful. Education, transparency, and trust-building are foundational steps that require time and commitment.

Participants also noted that many First Nations communities have experienced generations of consultation processes that have not always resulted in meaningful change or positive outcomes. As a result, trust cannot be assumed, nor can engagement be rushed. Building relationships requires patience, consistency, and a willingness to listen and learn. As was shared during discussions, "there is no clock" on relationship-building. The work must proceed at the pace necessary to establish genuine trust and mutual understanding.

The following three stages summarize the *Pathways Securement Process* as it is currently envisioned. Together, they are intended to support informed decision-making, respectful

engagement, and collaborative stewardship while recognizing that each community, property, and opportunity will require its own unique approach.

1. Initial Engagement and Relationship Building

The first stage focuses on creating the relationships necessary to support future conversations and decision-making. Activities may include:

- Early conversations and information sharing
- Identifying Elders, Knowledge Keepers, leadership, community representatives, and local champions
- Establishing trust, transparency, and shared intentions
- Understanding community priorities, interests, and concerns
- Following appropriate protocols for ceremony, invitations, gatherings, and cultural engagement
- Creating opportunities for education, dialogue, and relationship-building before formal requests or decisions are sought
- Respecting and adhering to the data sovereignty principles of OCAP

2. Land Identification and Scoping

Once relationships have been established, attention can turn toward understanding the land itself and the broader context surrounding potential securement opportunities. Activities may include:

- Applying the "What Lands and Why" considerations to trail and land securement planning and prioritization
- Mapping archeological, ecological, cultural, community, and treaty contexts
- Conducting site visits and Walking the Land activities
- Identifying archeological, ecological, cultural, historical, and community values
- Undertaking preliminary archaeological, environmental, and cultural assessments where appropriate
- Exploring opportunities, challenges, and potential stewardship goals

3. Joint Assessment and Decision-Making

The final stage focuses on collaborative evaluation and decision-making regarding land securement opportunities and future stewardship approaches. Activities may include:

- Applying the *Four Elements Model*
- Reviewing the *7 Land Securement Scenarios*
- Using the *Combined Land Considerations* and assessment criteria
- Considering legal, archeological, ecological, cultural, and community factors
- Co-developing or adopting a recommended securement approach
- Identifying opportunities for stewardship, relationship plans, or co-management arrangements where appropriate

9. Mno Aki, The Responsibility of Leadership

Throughout the development of the Pathways Framework, MALT reflected on the many conversations, local experiences, teachings, and resources that shaped this work. A clear theme emerged: the realities of land access, stewardship, conservation, and connection to the land differ greatly across Ontario, yet the decisions being made today will influence future generations across all regions.

In Southern Ontario and across the Greenbelt and Oak Ridges Trail, much of the land has already been altered by dense population growth, urbanization, infrastructure expansion, and development pressures. Access to land for harvesting, ceremony, medicines, and cultural practices has become increasingly limited. Green spaces continue to shrink, ecological systems become fragmented, and trail connectivity is often shaped by competing development interests. In many places, the ability to freely access and interact with the land in meaningful ways has already been significantly reduced.

For the Greenbelt area, the perspectives and lived experiences of Indigenous Champions, Knowledge Keepers, Elders, and local communities are essential in helping guide a stronger and more responsible path forward. Their voices provide critical insight into local conservation priorities, cultural relationships, access needs, and stewardship responsibilities that may otherwise be overlooked within conventional land planning systems.

This work also reinforced an important reality: decisions made along the Oak Ridges Trail and Greenbelt will influence and set precedent for future trail securement projects, conservation strategies, and land use decisions across Ontario and beyond. The approaches, relationships, policies, and legal tools established today may shape how future generations understand conservation, access, stewardship, and Indigenous relationships with land across the country.

Looking ahead, even in two generations, we recognize that future communities may inherit an entirely different ‘Greenbelt’, landscape, and ecological system than the one that exists today.

The lessons learned through this work, both the successes and shortcomings will not remain isolated to one project or one region. They will continue to ripple outward, informing and amplifying future approaches to land stewardship, conservation, and relationship-building across Canada.

The responsibility of leadership, therefore, is not only to protect land in the present moment, but to act with foresight, humility, and accountability for the generations and landscapes still to come.

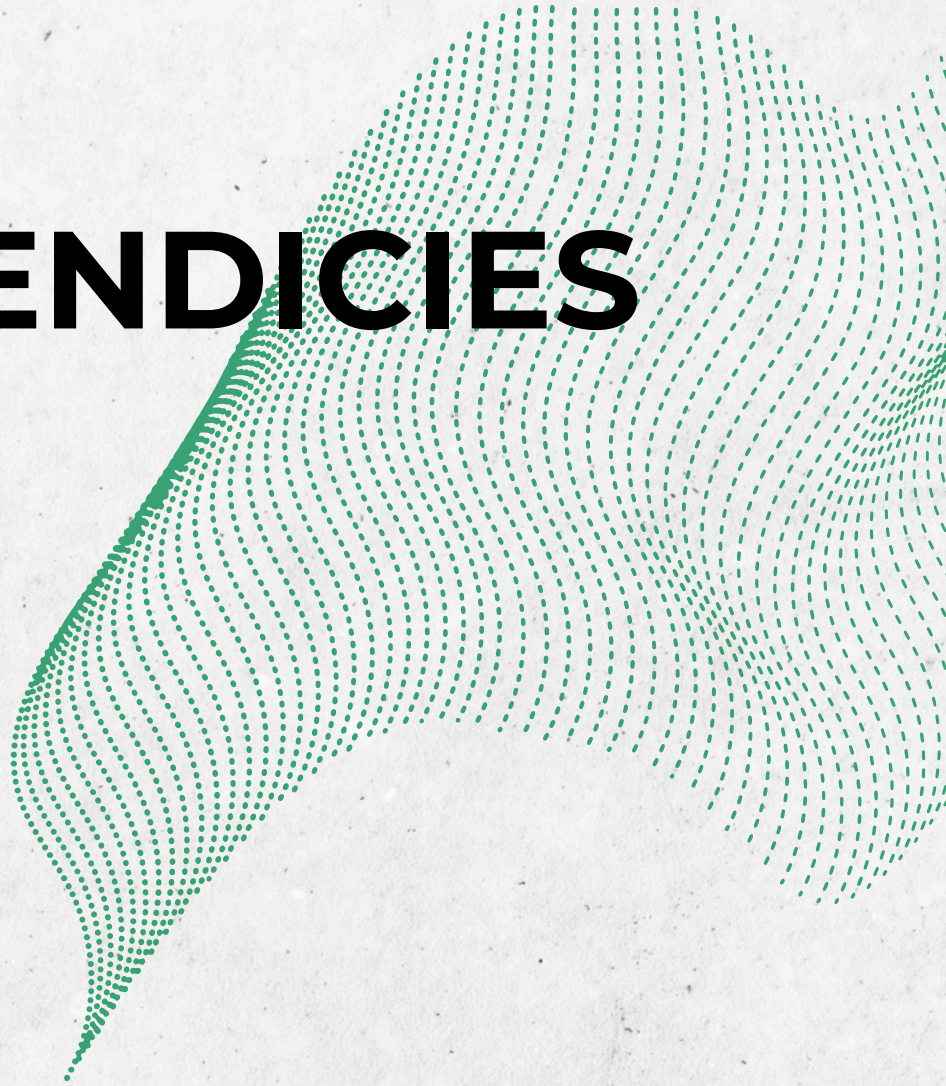
10. Summary List of Technical Tools & Resources

The following list includes the key tools and resources referenced throughout the Pathways Framework. Each tool is further detailed and fully documented in the corresponding Appendices, which provide additional guidance, templates, and supporting information for implementation.

- Ecological Gifts Program Handbook – Tax credits, incentives, and land donation pathways
 - 7 Land Securement Scenarios – Summary of legal pathways and associated legal review
 - Planning for Archaeology Study – Phase 1 findings and Phase 2 requirements
 - Sample Land Securement Agreement – Template for conservation and trail securement
 - OCAP Language and Data Sharing Template – Sample agreement outlining data ownership, access, and sharing protocols (see Appendix B: Planning for Archaeology Study)
 - Sample Interview Guide – Supporting tool aligned with the Four Elements Model and engagement process by MALT
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11. Appendices

APPENDICIES



APPENDIX A

7 LAND SECUREMENT SCENARIOS

SUMMARY OF LEGAL REVIEW

AND

WHERE TO INCLUDE INDIGENOUS ENGAGEMENT

Opportunities for Land Securement

There are seven opportunities for securing land for the Oak Ridges Moraine Trail. Below are the details and descriptions involved for each.

- Scenario 1: Fee Simple (FS) Land Donation through the Ecological Gifts Program
- Scenario 2: Fee Simple Trail Section Donation (Non-Ecological Gifts Program)
- Scenario 3: Fee Simple Purchase
- Scenario 4: Fee Simple Trail Section Purchase
- Scenario 5: Conservation Easement Agreement (CEA) via the Ecological Gifts Program
- Scenario 6: Conservation Easement Agreement or Trail Easement Donation (Non-Ecological Gifts Program)
- Scenario 7: Purchase Land → Sever Trail Section → Sell Remainder to Offset Cost

Scenario #1: Fee Simple Donation through Ecological Gifts Program

Description: A landowner donates full ownership of a property to a land trust under the Ecological Gifts Program (EGP). The land trust assumes long-term ownership and stewardship responsibility, ensuring permanent protection of natural features while securing the trail corridor. This scenario may be of interest to First Nations where fee simple ownership enables co-stewardship, Indigenous-led land management, cultural access, and potential land return models, including future transfer to or shared governance with an Indigenous Land Trust. While EGP provides strong ecological protection and tax benefits, federal program requirements may limit flexibility unless Indigenous interests are intentionally embedded in governance and stewardship agreements.

1. Identify property location with regards to First Nation Treaty and closest First Nation, then current owner(s)
2. Confirm total number of acres/hectares meets securement requirement.
3. Indigenous importance review/screening
4. Determine current land use designation
5. Review with Enhanced Natural Heritage Scoring- determine if it's a priority for securement or if it needs first Board approval (ORMLT process only)
6. Screening for high value aspects and gifts for First Nations - using What Lands and Why criteria.
7. Review for Indigenous importance, with consultation with First Nations with Treaty Rights over the area of the land, if interested.

8. Search title: Property title checked/pulled confirm all legal owners and to obtain any notices, encumbrances, legal documents, etc. that are registered on title.
9. Initial Meeting with landowner/donor and confirm stewardship endowment requirement.
10. Letter of Intent (LOI) received from landowner.
11. Fee Simple Donation Agreement signed by landowner and qualified recipient. Have a legal review of Agreement before signing. Use a standard Ontario Real Estate Association (OREA) Form Agreement, and tailor to the donation in the Schedule. *Note may want to make the Agreement conditional on board approval, appraisal, inspection of the property by buyer etc., and may want to have the donor represent and warrant that they will keep the property in the same condition / maintain the natural heritage features.
12. Archeological review - Phase 1 desktop
13. First Board approval (if needed)
14. Ecological Sensitivity Report (ESR) completed by qualified recipient
15. ESR submitted to ECCC - CEA, title, ESR
16. ESR approved by Environment & Climate Change Canada (ECCC) Certification of Ecologically Sensitive Land issued.
17. EcoGift number obtained from ECCC
18. Appraisal requested and quoted.
19. Approved Appraiser notified, with withhold 1/3 noted.
20. Appraisal completed. Appraisals for ecological gifts must meet the requirements of the Canadian Uniform Standards of Professional Appraisal Practice (The Standards). It is expected that all appraisers, whether or not they are members of the Appraisal Institute of Canada (AIC) will be familiar with the Standards the Income Tax Act provides.
21. Appraisal received and reviewed by qualified recipient.
22. Appraisal review and accepted by landowner.
23. Application and appraisal submitted to ECCC
24. Notice of Fair Market Value (FMV) received by qualified recipient
25. FMV approved by landowner/donor
26. If FMV not approved, re-consideration submitted to EGP
27. Resubmission approved by EGP.
28. Soft copy of signed Notice FMV sent to ECCC by qualified recipient
29. Hard copy of notice of MFV signed and submitted by landowner to ECCC
30. Final Board approval (if needed).
31. Title search, requisitions.
32. Meet lawyer to sign documents.

33. Complete closing between lawyers.
34. Transfer registered.
35. Transfer and Certification (i.e. fresh parcel register showing certified transfer) sent to ECCC
36. Survey registered on title if required by qualified recipient or EGP/ECCC *survey may not be necessary unless condition of Buyer/Donor Land Trust or if land is not registrable without new survey.
37. Tax receipt issued by qualified recipient.
38. Added to trail database.
39. Recipient completes Management/Relationship Plan for property. Opportunity for development and co-management with First Nations if interested.
40. Added to notification file for annual First Nation's update letter.
41. Final transaction added to internal accounting.

Legal Aspects / Preconditions to the Transfer

- Lawyer for the Buyer/Gift recipient to search title to confirm owner, and property description and if there are any encumbrances. If there are encumbrances (ie mortgage) then before proceeding, the property owner needs to obtain consent of the mortgage lender (/ holder of the interest) to sever and dispose of part of the lands. (Note: The mortgage lender may require a new mortgage/new registration of the charge.)
- Once ready, lawyer for the Buyer/Gift recipient to draft the Agreement of Purchase and Sale and Agreement to be made conditional on survey, appraisal and municipal approval of the severance/split.
- Purchase and Sale Agreement to be signed by both seller/buyer (donor/gift recipient).
- Have lands to be conveyed/donated appraised
- Property owner to submit application for severance (or to designate Land Trust as agent for municipal approval process)
- Complete survey of lands to be conveyed/donated and have draft reviewed by lawyer and submitted to Municipality (if a condition of the municipal consent)
- Deposit on title of Survey/Plan by Surveyor
- Lawyer for Land Trust (/ Lawyer for the Donor) to prepare a draft Transfer (of lands to be donated) and provide to the municipality (if a condition of the municipal consent).
- Lawyer(/s) to obtain a copy of the municipal consent to severance (/Certificate of Official).

- Once conditions are fulfilled (i.e., appraisal, survey and severance/municipal consent), the Purchase and Sale Agreement is firm.
- Due diligence process for Buyer/gift recipient begins (i.e., full title search and submit requisitions to the vendor/donor's lawyer)

Additional Ecological Gift Program Requirements:

- A Baseline Data Report and/or a Property Management Plan will need to be submitted to EGP within 6 months of closing.
- Minimum annual monitoring of the property is required under the EGP program.

Advantages

- For First Nations with Treaty Rights
 - Potential platform for co-management, Indigenous-led stewardship, and cultural access.
 - Opportunity to shape long-term land care if governance pathways are built in.
 - Ecological protection aligns with Indigenous conservation values.
- For the Donor
 - Significant tax benefits (including elimination of capital gains).
 - Assurance of permanent conservation and legacy protection.
 - Confidence that land will be stewarded by a conservation organization.
- For the Land Trust
 - Strongest form of land protection and control.
 - Clear legal authority over land use and stewardship.
 - Opportunity to embed co-stewardship or land return pathways over time.

Disadvantages

- For First Nations with Treaty Rights
 - Limited flexibility for Indigenous governance if not explicitly addressed.
 - May not align with land return priorities without intentional planning.
- For the Donor
 - Permanent loss of ownership and control.
 - Administrative complexity and timelines under EGP.
- For the Land Trust
 - High long-term stewardship costs and liability.
 - Reduced flexibility due to EGP compliance requirements.

Scenario #2- Fee Simple Donation of Trail Section Only - Non-Ecological Gift Program

Description: A landowner donates only the portion of their property required for the Trail, without using the EGP. The land trust gains full ownership of the trail corridor, securing permanent public access and stewardship. This approach may support Indigenous involvement in trail planning, cultural interpretation, and place-based education, and offers greater flexibility to incorporate Indigenous stewardship practices and agreements reflecting Treaty relationships, given the absence of federal EGP constraints.

Identify property location with regards to First Nation Treaty and closest First Nation, with Rights and then current owner(s).

1. Confirm total number of acres/hectares meets securement requirement.
2. Indigenous Importance review/screening
3. Current land use designation
4. Review with Enhanced Natural Heritage Scoring- determine if it's a priority for securement or if it needs first Board approval (ORMLT process only)
5. Screening for high value aspects and gifts for First Nations - using What Lands and Why criteria.
6. Review for Indigenous importance, with consultation with First Nations with Treaty Rights over the area of the land, if interested.
7. Archeological review - Phase 1 desktop
8. Search Title: Property title checked/pulled confirm all legal owners and to obtain any notices, encumbrances, legal documents, etc. that are registered on title. If there are encumbrances (i.e. mortgage) then before proceeding, the property owner needs to obtain consent of the mortgage lender (/ holder of the interest) to sever and dispose of part of the lands. (Note: The mortgage lender may require a new mortgage/new registration of the charge.)
9. Letter of Intent (LOI) received from landowner
10. Zoning/Planning Dept search: Confirm width of trail buffer is suitable/applicable (this will depend on municipal conditions of severance).
11. Appraisal requested and quoted.
12. Approved Appraiser notified, with withhold 1/3 noted.
13. Appraisal completed. Appraisals for ecological gifts must meet the requirements of the Canadian Uniform Standards of Professional Appraisal Practice (The Standards). It is expected that all appraisers, whether or not they are members of the Appraisal Institute of Canada (AIC) will be familiar with the Standards the Income Tax Act provides.

14. Appraisal received and reviewed by qualified recipient.
15. Appraisal review and accepted by landowner.
16. Agreement for purchase and sale drafted and reviewed by lawyer. Note: Make Agreement conditional on Seller obtaining municipal consent to severance. Consider including language in the Schedule A that says parties' agreement to automatically extend the title search and closing date if the donor isn't able to obtain the severance by the conditional date. *Note may also want to make the Agreement conditional on board approval, appraisal, inspection of the property by buyer etc., and may want to have the donor represent and warrant that they will keep the property in the same condition / maintain the natural heritage features.
17. First Board approval (if needed)
18. Agreement for purchase and sale accepted and signed by seller and land trust.
19. Appraisal requested and quoted
20. Approved appraiser notified, with withhold 1/3 noted
21. Appraisal received and reviewed by qualified recipient.
22. Appraisal review and accepted by landowner.
23. Final Board approval (if needed).
24. Final purchase agreement accepted and signed by ORMLT and landowner. It is now conditional only on severance application.
25. Landowner/donor (or Land Trust if agent of Owner) submits an application for severance/split to the municipality.
26. Complete survey/R-Plan and share with both lawyers for donor and Land Trust (this will be a condition of the municipal consent to the severance).
27. Once obtained, and approved by lawyer, the survey can be submitted to the municipality and deposited on title.
28. Consent granted/Certificate of Official issued. Once municipal consent to severance is granted, and board approval is obtained, and all conditions are fulfilled and Agreement is firm, and donation / transfer can proceed.
29. Title search, requisitions, closing.
30. Transfer of severed portion registered.
31. Title certified.
32. Tax receipt issued by recipient.
33. Final transaction added to accounting.
34. Added to trail database.
35. Recipient completes Management/Relationship Plan for property. Opportunity for development and co-management with First Nations if interested.
36. Added to notification file for annual First Nation's update letter.

37. Final transaction added to internal accounting

Advantages

For First Nations with Treaty Rights

- Opportunities for trail-based cultural interpretation and stewardship.
- Flexibility to incorporate Indigenous knowledge and relationships.

For the Donor

- Retains ownership of most of the property.
- Supports conservation and public access with minimal land loss.

For the Land Trust

- Secures permanent trail access at low acquisition cost.
- Greater flexibility in management and partnerships than EGP.

Disadvantages

For First Nations with Treaty Rights

- Narrow land base limits deeper land-based relationships.
- Risk of symbolic rather than substantive involvement.

For the Donor

- Reduced development or use flexibility on retained lands.
- Fewer tax benefits than EGP.

For the Land Trust

- Corridor management challenges and limited ecological value.

Scenario #3 - Fee Simple Purchase of Entire Parcel/Property

Description: The land trust purchases a full property outright to protect natural features and secure the Trail. This provides the highest level of control over land use and trail management but requires significant upfront capital and long-term stewardship capacity. Fee simple ownership may be of interest to First Nations where it creates pathways for future shared ownership, co-management, or land transfer, particularly for lands of cultural, ecological, or historical significance, when paired with intentional relationship-building.

Identify property location with regards to First Nation Treaty and closest First Nation, then current owner(s)

1. Confirm total number of acres/hectares meets securement requirement.
2. Indigenous Importance review/screening
3. Determine current land use designation

4. Review with Enhanced Natural Heritage Scoring- determine if it's a priority for securement or if it needs first board approval (ORMLT process only)
5. Screening for high value aspects and gifts for First Nations - using What Lands and Why criteria.
6. Review for Indigenous importance, with consultation with First Nations with Treaty Rights over the area of the land, if interested.
7. Archeological review - Phase 1 desktop
8. Search title: Property title checked/pulled confirm all legal owners and to obtain any notices, encumbrances, legal documents, etc. that are registered on title.
9. Seller's Real Estate Agent contacted (if relevant)
10. First Board approval (if needed)
11. Agreement for purchase and sale drafted and reviewed by lawyer. *May want to make this conditional on appraisal, board approval, financing, inspection, property being maintained in same condition.
12. Appraisal requested and quoted.
13. Approved Appraiser notified, with withhold 1/3 noted.
14. Appraisal completed. Appraisals for ecological gifts must meet the requirements of the Canadian Uniform Standards of Professional Appraisal Practice (The Standards). It is expected that all appraisers, whether or not they are members of the Appraisal Institute of Canada (AIC) will be familiar with the Standards the Income Tax Act provides.
15. Appraisal received and reviewed by Land Trust.
16. Conditional Agreement for purchase and sale accepted and signed by seller and land trust.
17. Final Board approval (if needed)
18. Buyer Conditions fulfilled.
19. Final purchase agreement accepted /signed by Land Trust/Recipient and landowner
20. Survey completed and registered on title if it's a requirement of Land Trust
21. Title search, requisitions, closing
22. Transfer registered
23. Title certified
24. Tax receipt issued by recipient
25. Final transaction added to accounting
26. Added to trail database
27. Recipient completes Management/Relationship Plan for property. Opportunity for co-development and management with First Nations if interested.
28. Added to notification file for annual First Nation's update letter.
29. Final transaction added to internal accounting

Legal Aspects / Preconditions to the Transfer

- Lawyer for the Buyer/Gift recipient should be engaged early to review title (to confirm owner, and property description and if there are any encumbrances) and draft the Agreement of Purchase and Sale.
- Purchase and Sale Agreement to be signed by both seller/buyer (donor/gift recipient).
- Once the conditions are fulfilled and an NOF (Notice of Fulfillment of Conditions) is signed, the Agreement is firm.
- No survey is necessary to complete the Transfer (unless a requirement of the Land Trust).
- Due diligence process for Buyer/gift recipient begins (i.e., full title search and submit requisitions to the vendor/donor's lawyer).

Advantages

- For the Donor (Seller)
 - Fair market compensation.
 - Simple transaction without long-term obligations.
- For the Land Trust
 - Full control over land use, access, and stewardship.
 - Ability to plan long-term conservation and trail integration.
- For First Nations with Treaty Rights
 - Creates potential for future shared ownership or land transfer.
 - Opportunity for early partnership shaping governance.

Disadvantages

For the Donor

- No charitable tax benefits.
- No influence over future use.

For the Land Trust

- High capital and long-term financial burden.

For First Nations with Treaty Rights

- Risk of delayed or absent land return pathways.
- Limited involvement if not prioritized early.

Scenario #4 - Fee Simple Purchase of Trail Section-Only

Description: The land trust purchases only the land needed for the Trail corridor, reducing acquisition costs while ensuring permanent trail access and protection. This scenario may be of interest to First Nations where it supports secure access to culturally significant travel routes, collaborative stewardship of the trail corridor, and opportunities for Indigenous-led interpretation, though broader land-based opportunities may be limited by the narrower footprint.

Identify property location with regards to First Nation Treaty and closest First Nation, with Rights and then current owner(s)

1. Confirm total number of acres/hectares meets securement requirement.
2. Indigenous Importance review/screening
3. Determine current land use designation
4. Review with Enhanced Natural Heritage Scoring to determine if it's a priority for securement or if it needs first Board approval (ORMLT process only)
5. Screening for high value aspects and gifts for First Nations - using What Lands and Why criteria.
6. Review for Indigenous importance, with consultation with First Nations with Treaty Rights over the area of the land, if interested.
7. Archeological review - Phase 1 desktop
8. Search title: Property title checked/pulled confirm all legal owners and to obtain any notices, encumbrances, legal documents, etc. that are registered on title.
9. Initial Meeting with land donor
10. Letter of Intent (LOI) received from landowner
11. Zoning search: Confirm width of trail buffer is suitable/applicable (this will depend on municipal conditions of severance).
12. The conditions of severance would be specific to each municipality. In each case, the merits of the severance application will be measured against criteria such as: conformity with the Official Plan, the Provincial Policy Statement (PPS) and the applicable provincial plan.
13. Appraisal requested and quoted.
14. Approved Appraiser notified, with withhold 1/3 noted.
15. Appraisal completed. Appraisals for ecological gifts must meet the requirements of the Canadian Uniform Standards of Professional Appraisal Practice (The Standards). It is expected that all appraisers, whether or not they are members of the Appraisal Institute of Canada (AIC) will be familiar with the Standards the Income Tax Act provides.

16. Appraisal received and reviewed by Land Trust.
17. Agreement for purchase and sale drafted and reviewed by lawyer * must be made conditional on municipal consent to sever.
18. Conditional Agreement for purchase and sale accepted by seller
19. Municipal approval process (detailed below)
20. Final Board approval (if needed)
21. Final purchase agreement accepted and signed by Land Trust/Recipient and Owner
*conditional on severance
22. Landowner/Seller (or Land trust if agent of owner) submits an application for severance/split to the municipality
23. Complete survey/R-Plan and share with both lawyers for Seller and Land Trust (and municipality as condition of consent).
24. Draft Survey / R-Plan shared with lawyer to review/approve and municipality; once approved, then survey can be deposited on title
25. Consent granted/Certificate of Official issued. Once municipal consent to severance is granted, and board approval is obtained, and all conditions are fulfilled and agreement is firm, and donation / transfer can proceed.
26. Title search, requisitions, closing
27. Transfer or severed portion registered
28. Title certified
29. Tax receipt issued
30. Final transaction added to accounting
31. Added to trail database.
32. Recipient completes Management/Relationship Plan for property. Opportunity for co-development and management with First Nations if interested.
33. Added to notification file for annual First Nation's update letter.
34. Final transaction added to internal accounting

Legal Aspects / Preconditions to the Transfer

- Lawyer for the Buyer should be engaged early to review title (to confirm owner, and property description and if there are any encumbrances) and draft the Agreement of Purchase and Sale. Agreement to be made conditional on municipal approval of the severance/split.
- Purchase and Sale Agreement to be signed by both seller/buyer.
- Property owner to submit application for severance to the Municipality (or to designate Land Trust as agent for municipal approval process).

- Complete survey of lands to be conveyed and have draft R-Plan reviewed by lawyer and submitted to Municipality (if a condition of the municipal consent).
- Lawyer for Land Trust (/ Lawyer for the Seller) to prepare a draft Transfer (of lands to be donated) and provide to the municipality (if a condition of the municipal consent).
- Deposit on title of Survey/Plan by Surveyor.
- Lawyer(/s) to obtain a copy of the municipal consent to severance (/Certificate of Official).
- Once conditions are fulfilled (i.e., survey and severance/municipal consent etc.), the Purchase and Sale Agreement is firm.
- Due diligence process for Buyer begins (i.e., full title search and submit requisitions to the vendor/donor's lawyer).

Advantages

For First Nations with Treaty Rights

- Secures long-term access along historic or cultural travel routes.
- Enables Indigenous interpretation and stewardship along the trail.

For the Donor (Seller)

- Receives compensation while retaining most of the land.
- Clear delineation of responsibilities.

For the Land Trust

- Cost-effective way to secure trail continuity.
- Permanent control of the ORMT corridor.

Disadvantages

For First Nations with Treaty Rights

- Limited opportunity for broader land-based practices.
- Reinforces corridor-focused engagement.
- Limited ecological protection beyond the trail corridor.

For the Donor

- Severance may reduce value or functionality of retained land.

For the Land Trust

- Fragmented ownership increases management complexity.

Scenario #5 - Conservation Easement Agreement Placed on the Entire Property through the Ecological Gift Program

Description: A landowner retains ownership but grants a Conservation Easement under the EGP that permanently protects natural features and secures trail access. This option balances private ownership with long-term conservation and provides tax benefits to the landowner, while requiring ongoing monitoring by the land trust. This scenario may align with Indigenous interests where easement terms explicitly recognize Treaty Rights, cultural access, and Indigenous participation in stewardship and monitoring, though federal EGP requirements necessitate careful drafting to ensure flexibility. The landowner retains ownership of the land, but the Easement is added to the deed of the property. The trail is included as a permissible use within the CEA.

1. Identify property location with regards to First Nation Treaty and closest First Nation with rights, then current landowner(s)
2. Confirm total number of acres/hectares meets securement requirement.
3. Indigenous Importance review/screening
4. Determine current land use designation
5. Review with Enhanced Natural Heritage scoring to determine if it's a priority for securement or if it needs first Board approval (ORMLT process only).
6. Screening for high value aspects and gifts for First Nations - using What Lands and Why criteria.
7. Review for Indigenous importance, with consultation with First Nations with Treaty Rights over the area of the land, if interested.
8. Archeological review - Phase 1 desktop
9. Title search: Property title checked/pulled confirm all legal owners and to obtain any notices, encumbrances, legal documents, etc. that are registered on title.
10. Meeting with land donor - confirm stewardship endowment requirement (if applicable)
11. Letter of Intent (LOI) received from landowner.
12. Have the area surveyed.
13. Engage Land Trust lawyer early. Share a copy of the LOI and draft survey with a qualified recipient lawyer. Lawyer will prepare a draft easement for the qualified recipient and landowner to review. If a conservation easement agreement, then should use the Ontario Land Trust Alliance (OLTA) template as starting point for negotiations.
14. LOI and Draft CEA sent to the landowner and landowner's lawyer for review and signature. If CEA is signed by both landowner and land trust, then the lawyer for

each party can prepare the documents to be registered on title. Presently, the recommended best practice is to register a Notice of Agreement, Easement, Restrictive Covenants (s. 119) and Restrictions (s. 118). The A&D re Notice of Agreement, Easement in Gross, Restrictive Covenants, can be signed and registered on title.

15. Ecological Sensitivity Report (ESR) completed
16. ESR submitted to ECCC - CEA, title, ESR
17. ESR approved by ECCC - Certificate of Ecologically Sensitive Land issued
18. EcoGift number received from ECCC/EGP
19. Appraisal requested and quoted.
20. Approved Appraiser notified, with withhold 1/3 noted.
21. Appraisal completed. Appraisals for ecological gifts must meet the requirements of the Canadian Uniform Standards of Professional Appraisal Practice (The Standards). It is expected that all appraisers, whether or not they are members of the Appraisal Institute of Canada (AIC) will be familiar with the Standards the Income Tax Act provides.
22. Appraisal received and reviewed by Land Trust.
23. Appraisal review and accepted by landowner
24. Application and appraisal submitted to ECCC
25. Notice of Fair Market Value (FMV) received by qualified recipient
26. FMV approved by owner/donor
27. If FMV not approved, re-consideration submitted to EGP
28. Resubmission approved by EGP
29. Soft copy of signed Notice FMV sent to ECCC by qualified recipient,
30. Hard copy of Notice of MFV signed and submitted by landowner to ECCC
31. Final Board approval (if needed)
32. Baseline Data Report (BDR) completed (summary to be registered with CEA on title and longer, detailed version to be retained by qualified recipient).
33. Signed Summary BDR sent to ECCC
34. Survey registered on title. This is usually done before the CEA documents are registered on title because the survey may contain as separate parts the areas that are subject to different levels of protection.
35. Owner-signed detailed BDR registered on title within 6 months of closing.
36. Register on title the Notice of Agreement, Easement, s. 119 Restrictive Covenants (and, if applicable s. 118 Restrictions) (the "Registered Instruments")
37. Registered Instruments registered with Land Registry Office
38. Registered Instruments and Certification (i.e., fresh parcel register showing the instruments have been certified sent to ECCC

39. Tax receipt issued to donor by qualified recipient
40. Recipient completes Management/Relationship Plan for property. Opportunity for development and co-management with First Nations if interested.
41. Added to notification file for annual First Nation's update letter.
42. Final transaction added to internal accounting

Legal Aspects / Preconditions

The recipient organization will be required to have and submit their Change in Use, Violations and Disposition Policy to EGP as part of their review process.

A minimum of annual monitoring for CEA compliance is required by EGP.

NOTES: the notes on the legal process above is for an easement for trail access.

Advantages

For First Nations with Treaty Rights

- Can protect culturally significant landscapes.
- Opportunity to embed access, monitoring, and Two-Eyed Seeing approaches to land stewardship if negotiated.

For the Donor

- Strong tax incentives while retaining ownership.
- Assurance that conservation values are permanently protected.

For the Land Trust

- Permanent protection without acquisition costs.
- EGP strengthens enforceability.

Disadvantages

For First Nations with Treaty Rights

- Easement terms may restrict Indigenous land use if not explicitly addressed.
- Federal framework may constrain Indigenous law.

For the Donor

- Permanent restrictions and ongoing compliance.
- Limited adaptability over time.

For the Land Trust

- Perpetual monitoring obligations without ownership.
- Limited flexibility under EGP rules.

Scenario #6 – Purchase of a Trail Conservation Easement Agreement

Description: A landowner retains ownership but grants a Conservation Easement under the EGP that permanently protects natural features and secures trail access. This option balances private ownership with long-term conservation and provides tax benefits to the landowner, while requiring ongoing monitoring by the land trust. This scenario may align with Indigenous interests where easement terms explicitly recognize Treaty Rights, cultural access, and Indigenous participation in stewardship and monitoring, though federal EGP requirements necessitate careful drafting to ensure flexibility.

1. Identify property location with regards to First Nation Treaty and closest First Nation, with Rights and then current owner(s).
2. Confirm if/what funding is available and what requirements must be met.
3. Confirm total number of acres/hectares meets securement requirement.
4. Indigenous importance review/screening
5. Determine current land use designations
6. Review with Enhanced Natural Heritage Scoring- determine if it's a priority for securement or if it needs 1st Board Approval - ORMLT process only
7. Screening for high value aspects and gifts for First Nations - using What Lands and Why criteria.
8. Review for Indigenous importance, with consultation with First Nations with Treaty Rights over the area of the land, if interested.
9. Archeological review - Phase 1 desktop
10. Search title: Property title checked/pulled confirm all legal owners and to obtain any notices, encumbrances, legal documents, etc. that are registered on title.
11. Initial Meeting with Land Donor - confirm Stewardship Endowment requirement.
12. Letter of Intent received from landowner.
13. Confirm width of trail buffer is suitable/applicable.
14. Have the area surveyed. Engage Land Trust lawyer early. Share a copy of the LOI and draft survey with a Land Trust lawyer. Lawyer will prepare a draft easement for the Land Trust and Owner to review. If conservation easement agreement, use OLTA template as basis.
15. LOI and Draft CEA sent to landowner and landowner's lawyer for review, negotiation, and signature. If CEA signed by both landowner and Land Trust, then lawyer for each party can prepare the documents to be registered on title. Presently, the recommended best practice is to register a Notice of Agreement, Easement, Restrictive Covenants (s. 119) and Restrictions (s. 118). The A&D re Notice of Agreement, Easement in Gross, Restrictive Covenants, can be signed and registered on title.

16. Appraisal requested and quoted.
17. Approved Appraiser notified, with withhold 1/3 noted.
18. Appraisal completed. Appraisals for ecological gifts must meet the requirements of the Canadian Uniform Standards of Professional Appraisal Practice (The Standards). It is expected that all appraisers, whether or not they are members of the Appraisal Institute of Canada (AIC) will be familiar with the Standards the Income Tax Act provides.
19. Appraisal received and reviewed by Land Trust.
20. Appraisal review and accepted by landowner.
21. Application and appraisal submitted to ECCC.
22. Final Board approval.
23. Baseline Data Report (BDR) completed (short form to be registered with CEA on title and longer, detailed version to be retained by qualified recipient).
24. Signed BDR Sent to ECCC.
25. Survey registered on title.
26. Register on title the Notice of Agreement, Easement, s. 119 Restrictive Covenants (and, if applicable s. 118 Restrictions) (the “Registered Instruments”).
27. Registered instruments and Certification sent to ECCC.
28. Tax receipt issued to donor by qualified recipient.
29. Added to trail database.
30. Added to notification file for annual First Nation’s update letter.
31. Final transaction added to internal accounting

Advantages

For First Nations with Treaty Rights

- Greater flexibility to recognize Treaty Rights, Indigenous law, and stewardship roles.
- Supports relationship-driven conservation.

For the Donor

- Retains ownership with tailored conservation outcomes.
- Greater flexibility in agreement terms.

For the Land Trust

- Lower cost than ownership.
- Ability to design relationship-based agreements.

Disadvantages

For First Nations with Treaty Rights

- Protections may be less durable if not well-drafted.

- Outcomes vary depending on negotiation quality.

For the Donor

- Limited tax incentives.
- Long-term restrictions still apply.

For the Land Trust

- Enforcement relies more on relationships than regulation.

Scenario #7 - Buy, Sever and Sell Parcel/Property

Description: Recipient purchases the entire parcel of land from the landowner. The recipient then severs off the area of land to be retained for the trail, applies to have land severed into two parcels of land, and then sells the remaining, now separate parcel of land at market value to recoup some of the cost of the land purchase. The retained portion is ideally sterilized for development and is severed with Conservation as the intent. The other section is sold and retains existing or optioned building(s).

NOTES There are three steps here: 1. Purchase 2. Severance 3. Sale.

1. Identify property location with regards to First Nation Treaty and closest First Nation, with Rights and then current owner(s).
2. Confirm if/what funding is available and what requirements must be met.
3. Confirm total number of acres/hectares meets securement requirement.
4. Indigenous Importance review/screening - Opportunity to invite closest First Nation with Treaty to review if interested.
5. Search title: Property title checked/pulled confirm all legal owners and to obtain any notices, encumbrances, legal documents, etc. that are registered on title.
6. Determine current land use designation(s)
7. Review with Enhanced Natural Heritage Scoring- determine if it's a priority for securement or if it needs first Board approval (ORMLT process only)
8. Screening for high value aspects and gifts for First Nations - using What Lands and Why criteria.
9. Review for Indigenous importance, with consultation with First Nations with Treaty Rights over the area of the land, if interested.
10. Archeological review - Phase 1 desktop
11. Search title; Property title checked/pulled confirm all legal owners and to obtain any notices, encumbrances, legal documents, etc. that are registered on title.
12. Seller's Real Estate Agent contacted (if relevant)

13. Obtain municipal comfort letter/ legal opinion on or municipal approval for future severance, complete due diligence to ensure that the property can be severed and later sold and the Land Trust's intended use of the property can be had.
14. Appraisal requested and quoted.
15. Approved Appraiser notified, with withhold 1/3 noted.
16. Appraisal completed. Appraisals for ecological gifts must meet the requirements of the Canadian Uniform Standards of Professional Appraisal Practice (The Standards). It is expected that all appraisers, whether or not they are members of the Appraisal Institute of Canada (AIC) will be familiar with the Standards the Income Tax Act provides.
17. Appraisal received and reviewed by Land Trust.
18. Agreement for purchase and sale drafted and reviewed by lawyer. Agreement of Purchase and Sale (APS) must be made conditional on Land trust obtaining municipal comfort letters/consents to the future severance. Have a lawyer review APS and conditional clauses. Consider including a clause that gives First Nations with Treaty Rights first right of refusal for buying the land to be severed.
19. Offer submitted by Land Trust to Seller.
20. Purchase Agreement accepted by seller.
21. Review /feedback from First Nations if interested.
22. Final board approval.
23. All conditions are fulfilled. Purchase agreement is firmed up.
24. Title search, requisitions, closing of purchase.
25. Municipal approval process re: severance. Once the purchase is complete, and the Land Trust/Recipient is ready to proceed with the severance and sale, they should apply to the municipality for a severance. A condition of the consent will be that a survey is conducted. There will be other conditions as well. All need to be satisfied prior to the municipality granting their consent.
26. Draft survey prepared and shared with Land Trust Lawyer for review/approval. Also shared with the municipality as part of the condition of consent.
27. Once approved, survey deposited on title
28. Once municipal consent to severance is obtained, can move forward with sale. **If you list the property before consent to severance is granted by municipality, then make any sale agreement conditional on municipal consent. Have lawyer draft/review sale contract.
29. Draft Sale Agreement, should include conditions, such as Board approval etc. If there is already have municipal consent to severance, don't need to make the sale agreement conditional on obtaining consent. If not, then make sure the sale agreement is conditional on municipal consent.

30. Once municipal consent to severance is granted, and board approval is obtained, and all conditions are fulfilled and Agreement is firm, sale can proceed.
31. Title search, requisitions, closing of sale
32. Title certified
33. Tax receipt issued to donor by qualified recipient
34. Recipient completes Management/Relationship Plan for property. Opportunity for development and co-management with First Nations if interested.
35. Added to notification file for annual First Nation's update letter.
36. Final transaction added to internal accounting

Advantages

For First Nations with Treaty Rights

- Opportunity to integrate land return or shared stewardship into resale strategy.
- Enables intentional reconciliation outcomes if structured early.

For the Donor (Seller)

- Market-value sale without long-term obligations.

For the Land Trust

- Can secure trail land while recovering acquisition costs.
- Strategic use of capital for high-priority corridors.

Disadvantages

For First Nations with Treaty Rights

- Risk of exclusion from resale decisions.
- Reconciliation outcomes may be secondary to financial drivers.

For the Land Trust

- Financial, regulatory, and reputational risk.
- High staff capacity demands.
- Fluctuations in market value between purchase and re-sale.

Across all scenarios, disadvantages may arise when:

- Indigenous engagement occurs late or inconsistently
- Long-term stewardship funding is insufficient
- Legal tools prioritize permanence over adaptive, relationship-based governance

APPENDIX B

PLANNING FOR ARCHEOLOGY STUDY REPORT





PLANNING FOR ARCHAEOLOGY

Oak Ridges Moraine Planning Area Oak Ridges Moraine Trail

March 26, 2026



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LIST OF ACRONYMS

AA	Archaeological Assessment
CA	Contracting Authority
CAC	Contracting Authority Contact
FBCSA	Funeral, Burial and Cremation Services Act, S.O. 2002, c. 33
GP	Greenbelt Plan
GF	Greenbelt Foundation
MCM	Ministry of Citizenship and Multiculturalism.
MPBSD	Ministry of Public and Business Service Delivery
MTCS	Ministry of Tourism, Culture and Sport
NEC	Niagara Escarpment Commission
NEP	Niagara Escarpment Plan
OASD	Ontario Archaeological Sites Database
OHA	Ontario Heritage Act, R.S.O. 1990, c.O18
ORMCP	Oak Ridges Moraine Conservation Plan
ORMF	Oak Ridges Moraine Foundation
ORMLT	Oak Ridges Moraine Land Trust
ORMPA	Oak Ridges Moraine Planning Area
ORMT	Oak Ridges Moraine Trail
ORTA	Oak Ridges Trail Association
PPS	Provincial Planning Statement, 2024
S & Gs	Standards and Guidelines for Consultant Archaeologists 2011, MTCS now MCM



DEFINITIONS

Archaeological Assessment – As per the S & Gs, “For a defined project area or property, a survey undertaken by a licenced archaeological within those areas determined to have archaeological potential in order to identify archaeological sites, followed by evaluation of their cultural heritage value or interest, a determination of their characteristics. Based on this information, recommendations are made regarding the need for mitigation of impacts and the appropriate means for mitigating those impacts.”

Archaeological Resource – As per the S & Gs, “In the context of the Standards and Guidelines, objects, materials and physical features identified by licenced archaeologists during a Stage 2 archaeological assessment as possibly possessing cultural heritage value or interest. Analysis using the criteria set out in the Standards and Guidelines determines whether those objects, materials and physical features meet the definition of an archaeological site under the Ontario Heritage Act and whether Stage 3 archaeological assessment is required. In various planning and development contexts, the term may refer to any or all of archaeological potential, artifacts and archaeological sites.”

Archaeological Site – As defined in Ontario regulation as “any property that contains an artifact or any other physical evidence of past human use or activity that is of cultural heritage value or interest.”

Artifact – As defined in Ontario regulation as “any object, material or substance that is made, modified, used, deposited or affected by human action and is of cultural heritage value or interest.”

Contractor – The person or entity authorized by the Contracting Authority to conduct maintenance for the Oak Ridges Moraine Trail, plan and implement trail rerouting, trail expansion or otherwise alter the trail in a manner that involves any ground disturbance.

Contracting Authority – The entity which has authorized works on the Oak Ridges Moraine Trail, whether the Greenbelt Foundation, the Oak Ridges Trail Association, the landowner or whatever governing authority for the Oak Ridges Moraine Trail may exist at the time.

Contracting Authority Contact – The person designed by the Contracting Authority to implement the protocols outlined in this Document.

Cultural Heritage Value or Interest – As per the S & Gs “For the purposes of the Ontario Heritage Act and its regulations, archaeological resources that possess cultural heritage value or interest are protected as archaeological sites under Section 48 of the act. Where analysis of documented artifacts and physical features at a given location meets the criteria stated in the S & Gs, that location is protected as an archaeological site and further archaeological assessment may be required.

Indigenous Communities and Nations – Collectively, the original peoples of North America, America and their descendants, including First Nations (Indians), Métis and Inuit.

Indigenous Communities and Nations Engagement – A process of meaningfully engaging with Indigenous Communities and Nations whose rights and interests may be affected, with the objective of providing relevant information to community leaders and members, meaningfully considering their input, and coordinating on matters of interest to avoid, reduce or mitigate potential adverse impacts.

Indigenous Monitors – An individual(s) appointed by an Indigenous Community and Nation to monitor and/or perform fieldwork on behalf of such Indigenous Communities and Nations or their assigned consultant.



PLANNING FOR ARCHAEOLOGY
Oak Ridges Moraine Planning Area and the Oak Ridges Moraine Trail

Licensed Archaeologist – An individual holding a Professional Class Consulting Licence issued by the MCM.

I INTRODUCTION

I.1 Context

The Oak Ridges Moraine is a defining ecological and cultural landscape within Ontario’s Greenbelt, protecting critical headwaters, groundwater recharge areas, agricultural lands, and natural heritage systems. The *Oak Ridges Moraine Conservation Plan, 2017 (ORMCP)* provides land use and resource management planning direction to provincial ministers, ministries, and agencies, municipalities, landowners and other stakeholders on how to protect lands within the area defined as the Oak Ridges Moraine Planning Area (ORMPA). It recognizes the Oak Ridges Moraine’s important natural, cultural heritage and agricultural resources, and supports recreation and tourism uses, as appropriate. The ORMCP supports the identification, conservation, use and wise management of cultural heritage resources, including archaeological resources, to support the social, economic and cultural well-being of all communities, including First Nations and Métis communities.

This **PLANNING FOR ARCHAEOLOGY** document (henceforth the Document) was commissioned by the Oak Ridges Moraine Land Trust (ORMLT) and developed by TMHC Inc. to address concerns that previously documented and as of yet undocumented archaeological resources as well as Indigenous or other Ancestor remains to be present on the Oak Ridges Moraine in areas of the ORMPA where the ORMLT or its affiliated organizations operate. It emphasizes the need for archaeological assessments as an integral component of both trail planning and land securement.

Trail planning, construction, maintenance and use have been identified by the ORMLT as the activities most likely to result in impacts to archaeological resources as well as Indigenous or other Ancestor remains. The Oak Ridges Moraine is spanned by the Oak Ridges Moraine Trail (ORMT) which constitutes 268 km of off-road and roadside trail meant primarily for pedestrian traffic. While much of the ORMT currently follows existing roadways with paved shoulders, the eventual goal is for the ORMT to provide a continuous off-road trail across the moraine. When completed, the ORMT will be one of Canada’s most iconic trails. It will connect to two of Canada’s other iconic trails – The Bruce Trail and The Trans Canada Trail.

There are four organizations with specific mandates that relate to the ORMT:

1. Oak Ridges Moraine Land Trust (ORMLT);
2. The Greenbelt Foundation (GF);
3. The Oak Ridges Moraine Foundation (ORMF); and,
 - a. The ORMF was incorporated into the GF in 2020 but retains its formal mandate to protect and promote the Oak Ridge Moraine
4. Oak Ridges Trail Association (ORTA).

In 2025, the GF published the Oak Ridges Moraine Trail Strategy (ORMTS) which outlined a series of seven strategic objectives to guide the future of the ORMT:

1. Strengthen alignment, leadership, and collaboration of partners along the Oak Ridges Moraine.
2. Create opportunities for meaningful relationship building with First Nations and other Indigenous Peoples, in the spirit of truth and reconciliation.
3. Invest in the ORMT to create connections through green space that provide a consistent, accessible experience to safely connect users to the moraine’s natural and cultural assets.



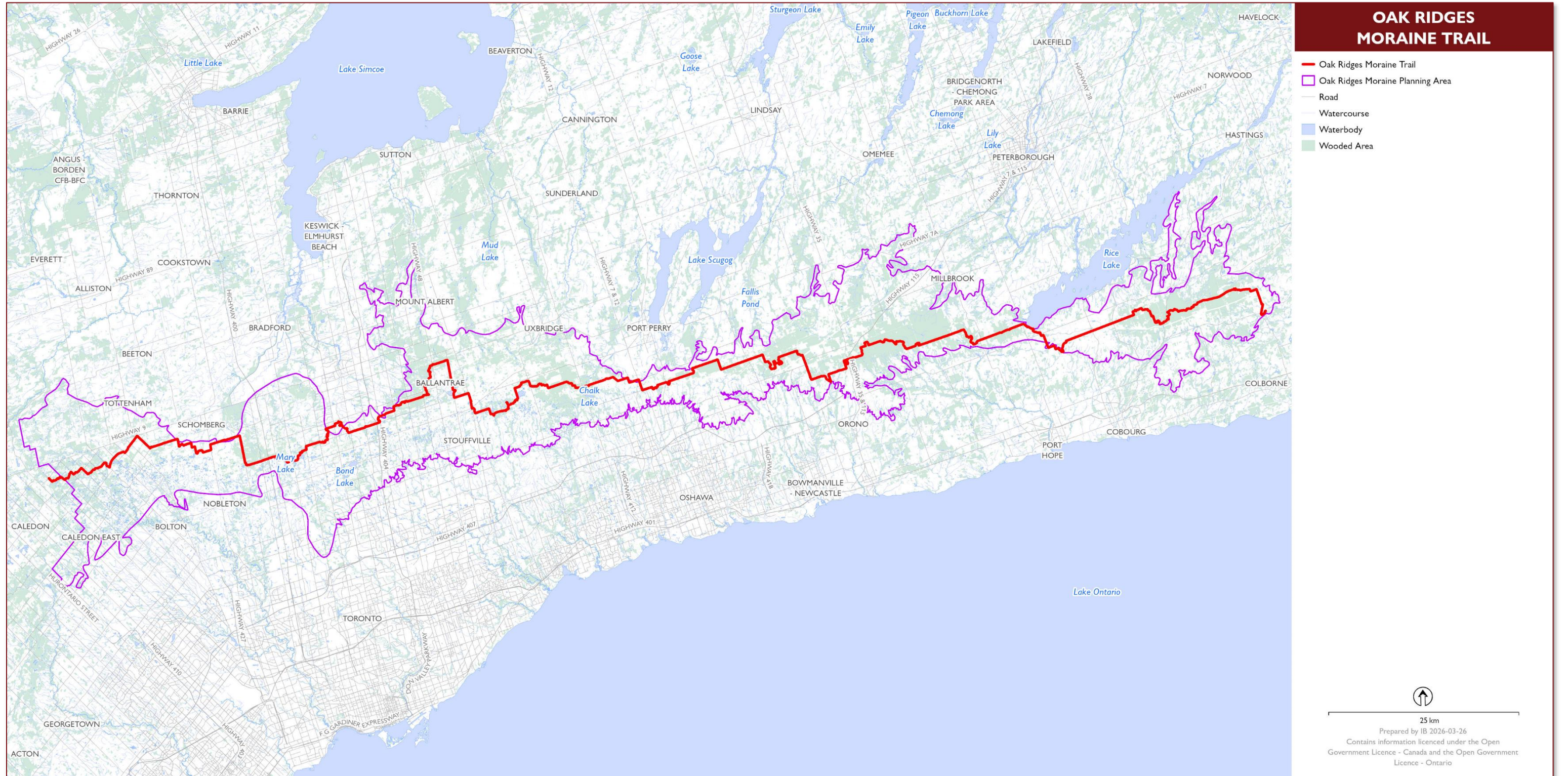
4. Secure and maintain access to the ORMT through partnerships with the Province of Ontario, conservation authorities, municipalities, First Nations Rights holders, landowners, and other agencies/ trail organizations.
5. Foster sustainable tourism and economic development in the communities along the ORMT and expand awareness of the ORMT through enhanced wayfinding, branding, partnerships, and promotions.
6. Protect the natural heritage system through teaching, outreach and the development of programs that build personal connections to the Oak Ridges Moraine.
7. Connect the ORMT to other trails networks across the length of the Oak Ridges Moraine.

The procedures and principles outlined in this Document align with the strategic objectives of the ORMTS. It describes the protocols and processes to follow to when trail maintenance and construction activities are contemplated or undertaken by the GF, ORMLT or the ORTA or when archaeological resources and/or Indigenous Ancestors are inadvertently discovered or impacted by members of the public making use the ORMT.

It also emphasizes the value of archaeological assessments as a means to reduce the likelihood that archaeological resources as well as Indigenous or other Ancestor remains will be disturbed or otherwise subject to deleterious activities during the ORMLT's land securement and stewardship within the ORMPA.

The ORMPA lands are acknowledged by the GF, ORTA and the ORMLT to be located within the treaty territories of the Mississaugas of the Credit as well as the treaty territories of the Chippewas of Georgina Island, Rama, and Beausoleil, and of the Mississaugas of Alderville, Curve Lake, Hiawatha, and Scugog Island – the First Nations of the Williams Treaties.

The ORMPA lands are also situated within the traditional territory of the Haudenosaunee and Wendat and now home to many Indigenous Peoples.



Map I: Oak Ridges Moraine Planning Area and Oak Ridges Moraine Trail



1.2 Purpose of the Planning for Archaeology Document

The purpose of the Document is to address construction and trail planning issues related to archaeological resources by:

- a) Outlining the protocols and processes to utilize in the event that previously undocumented archaeological resources or human remains are identified during trail construction or maintenance by a Contractor authorized by the Contracting Authority;
- b) Outlining the protocols and processes to utilize in the event that a member of the public reports the identification of, or impacts to, an archaeological resource or human remains to the Contracting Authority;
- c) Outlining the processes to complete an archaeological assessment should additional lands be acquired by the ORMLT or be required for rerouting or expansion of the ORMT.

The Document shall be considered a living document; to be updated to periodically to reflect developments in the governance of the ORMT, the archaeology of the lands connected to the ORMPA and the evolving cultural, legal and regulatory environment.

This Document does not take the place of a Stage I Archaeological Assessment of the ORMPA or the ORMT.

1.3 Legislative and Regulatory Requirements

The Document was developed to meet applicable law and regulatory requirements including:

- Ontario Heritage Act, R.S.O. 1990
- Standards & Guidelines for Consultant Archaeologists, 2011
- Provincial Planning Statement 2024
- Oak Ridges Moraine Conservation Plan, 2017
- Niagara Escarpment Plan, 2017
- Greenbelt Plan, 2017
- Funeral, Burial and Cremations Services Act, 2002

Official Plans developed by municipalities within the ORMPA may outline the local policies and procedures in place to align with the goals of the Provincial Planning Statement, 2024 as they relate to matters of cultural heritage.

2 ARCHAEOLOGICAL ASSESSMENTS

2.1 Legislative Context

2.1.1 Ontario Heritage Act (R.S.O. 1990)

The [Ontario Heritage Act](#) (R.S.O. 1990) (OHA) provides legislative oversight for the conservation, protection, and preservation of heritage resources in the Province of Ontario, including archaeological resources. The OHA assigns responsibility for doing so to a provincial ministry, now the Ministry of Citizenship and Multiculturalism (MCM). The MCM regulates how archaeological sites are dealt with by:

- establishing a system to license individuals permitted to identify and investigate archaeological sites;
- creating technical standards and guidelines for archaeological fieldwork and reporting;
- maintaining a list of registered archaeological sites; and
- overseeing transfers of archaeological collections.

The OHA does not speak to the need for undertaking archaeological assessments prior to land development. Instead, it regulates how such work must be undertaken and how archaeological sites are dealt with when the need for an archaeological assessment is prompted by other pieces of legislation.

2.1.1.1 Standards and Guidelines for Consultant Archaeologists, 2011

Under the *Ontario Heritage Act*, R.S.O. 1990 c. O.18, anyone wishing to carry out archaeological fieldwork in Ontario must meet the following criteria:

- have a licence from the MCM
- file a report with the MCM containing details of the fieldwork that has been done for each project and any other information that the ministry requires

All archaeological assessments must be conducted in accordance with the technical standards, as defined in the [Standards and Guidelines for Consultant Archaeologists, 2011](#), set out by the Ministry of Citizenship and Multiculturalism (MCM).

In November of 2024, MCM launched the Heritage Framework Transformation. This transformation aims to future-proof Ontario's heritage framework by streamlining processes, updating policies and legislation, and modernizing standards and guidelines. These improvements are aimed at helping regulatory systems keep pace with growing demands, support efficient economic and infrastructure development and strengthen collaboration in identifying and conserving cultural heritage resources.

The MCM is proposing targeted changes to the *Standards and Guidelines for Consultant Archaeologists, 2011* that would support streamlining assessments and make administrative updates to the document.

Any archaeological assessment work commissioned by the Contracting Authority will need to comply with the iteration of the *Standards and Guidelines for Consultant Archaeologists* that is current at the time of the assessment.



2.1.2 Provincial Planning Statement, 2024

Heritage concerns are recognized as a matter of provincial interest in Section 4.6 of the [Provincial Planning Statement \(PPS\) 2024](#) which states:

Planning authorities shall not permit *development* and *site alteration* on lands containing *archaeological resources* or *areas of archaeological potential* unless the *significant archaeological resources* have been *conserved*.

In the PPS, the term conserved means:

the identification, protection, management and use of built heritage resources, cultural heritage landscapes and archaeological resources in a manner that ensures their cultural heritage value or interest is retained. This may be achieved by the implementation of recommendations set out in a conservation plan, archaeological assessment, and/or heritage impact assessment that has been approved, accepted or adopted by the relevant planning authority and/or decision-maker. Mitigative measures and/or alternative development approaches should be included in these plans and assessments.

2.1.3 Oak Ridges Moraine Conservation Plan, 2017

The [Oak Ridges Moraine Conservation Plan \(ORMCP\)](#) provides land use and resource management planning direction to provincial ministers, ministries, and agencies, municipalities, landowners and other stakeholders on how to protect the Oak Ridges Moraine. It recognizes the Oak Ridges Moraine's important natural, cultural heritage and agricultural resources, and supports recreation and tourism uses, as appropriate.

The ORMCP supports the identification, conservation, use and wise management of cultural heritage resources, including archaeological resources, to support the social, economic and cultural well-being of all communities, including First Nations and Métis communities.

All municipal by-laws and official plans must conform to the ORMCP and, when there is a conflict between it and an official plan or zoning by-law, the ORMCP prevails.

2.1.4 Niagara Escarpment Plan, 2017

The [Niagara Escarpment Plan \(NEP\)](#) provides for the maintenance of the Niagara Escarpment, and land in its vicinity, as a continuous natural environment. The NEP also seeks to ensure that any development that occurs within the area is compatible with the protected natural environment. It establishes land use control for this important geological and hydrological feature. Development within the NEP area is governed by the Niagara Escarpment Commission (NEC).

The *Niagara Escarpment Planning and Development Act (RSO 1990)*, C. N.2, S. 5 empowers the Niagara Escarpment Commission (NEC) to make regulations for the NEP planning area and establish development permit requirements and exemptions. The NEP requires that:

1. Development shall not be permitted on lands containing archaeological resources or areas of archaeological potential unless significant archaeological resources are conserved.
2. Where proposed development is likely to impact cultural heritage resources or areas of archaeological potential, the proponent shall undertake a heritage impact assessment and/or archaeological



assessment. The proponent must demonstrate that heritage attributes will be conserved through implementation of proposed mitigative measures and/or alternative development approaches.

All municipal by-laws and official plans must conform to the NEP and, when there is a conflict between it and an official plan or zoning by-law, the NEP prevails.

2.1.5 Greenbelt Plan, 2017

The [Greenbelt Plan](#) was established under the Greenbelt Act, 2005. The act requires that the Greenbelt Plan be reviewed every 10 years, in conjunction with the NEP and the ORMCP. The focus of the plan is the protection of environmentally sensitive land within the Greenbelt Area from urban development.

The Greenbelt Plan established the “Protected Countryside” land designation and identified where urbanization should not occur in order to protect farmland and the ecological features within the Greenbelt Area. It established that within the Protected Countryside, cultural heritage resources shall be conserved in order to foster a sense of place and benefit communities.

All municipal by-laws and official plans must conform to the Greenbelt Plan and, when there is a conflict between it and an official plan or zoning by-law, the Greenbelt Plan prevails.

2.1.6 Funeral, Burial and Cremations Services Act, 2002

The [Funeral, Burial and Cremation Services Act](#) (S.O. 2002, c.33) (*FBCSA*) regulates the creation and operation of cemeteries in the Province of Ontario. The Act also governs unmarked graves and establishes a process for addressing and investigating human remains discoveries. Under direction from the MPBSDP Registrar, *FBCSA*, a landowner is required to obtain the services of a licensed consultant archaeologist to conduct an initial site assessment for the purpose of collecting basic information to assist in the issuing of a site declaration under the *FBCSA* and for restoring the burial site as best as possible. At the discretion of the MPBSDP Registrar, *FBCSA*, a formal burial investigation of the site may be ordered.

Under the *FBCSA*, an investigation is required to make a determination as to:

- the probable cultural origin or religious affiliation of the persons whose remains are interred and the basis upon which it is made;
- the boundaries of the burial site;
- the style and manner in which the human remains are interred;
- whether any artifacts or grave goods are associated with the burial; and
- whether the burial site was set aside with the apparent intention of interring human remains in accordance with cultural affinities and the basis upon which the opinion is made.

Using the information collected during the Burial Site Investigation (BSI), the MPBSDP Registrar, *FBCSA* may determine the cultural origin of the remains, identify a representative of the deceased, and establish the nature of the burial site through the issuance of a Declaration (*FBCSA* 2002 Section 97). The Declaration assigns the find to one of three categories which define a regulatory pathway for negotiation and long-term disposition:

- Indigenous peoples burial ground



- land set aside with the apparent intention of interring in it, in accordance with cultural affinities, human remains and containing remains identified as those of persons who were one of the Indigenous peoples of Canada;
- Burial ground
 - land set aside with the apparent intention of interring in it, in accordance with cultural affinities, human remains and containing remains identified as those of persons who were not one of the Indigenous peoples of Canada; or
- Irregular burial site
 - a burial site that was not set aside with the apparent intention of interring human remains in it.

2.2 Overview of Archaeological Assessment Requirements

As outlined in the *Standards and Guidelines for Consultant Archaeologists, 2011*, there are four Stages of archaeological assessment, for which a brief overview is provided below.

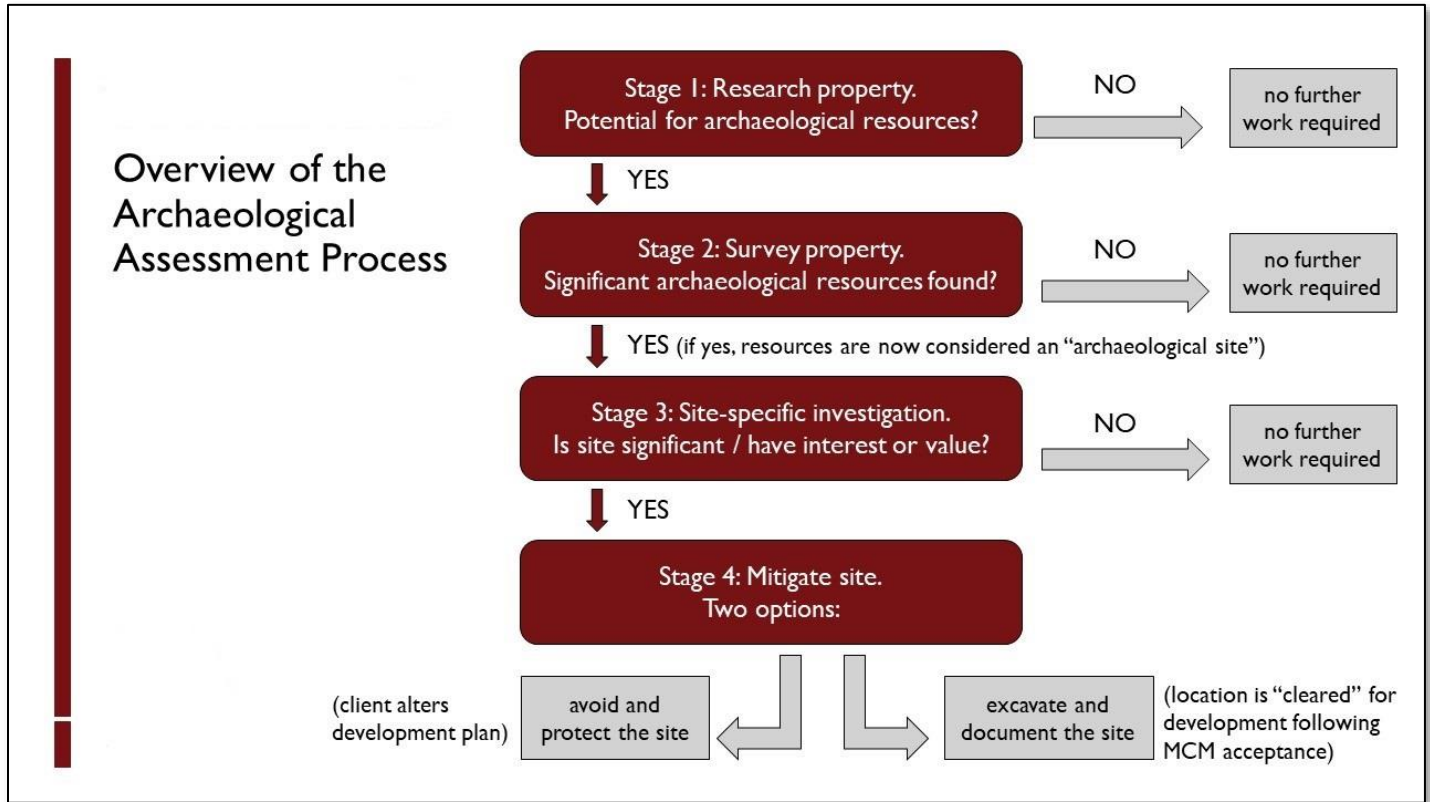


Figure 1: Overview of the Archaeological Assessment Process

2.2.1 Stage 1: Background Study

This Stage of the archaeological assessment process is to define the archaeological potential of a property. This is completed by reviewing nearby registered archaeological sites and previously-completed assessments, land use history, and landscape features (both natural and modern) to confirm and define the potential for archaeological remains to be present.

As outlined in the *Standards and Guidelines for Consultant Archaeologists, 2011*, a Stage 1 archaeological assessment analyses the archaeological potential of a property based on its recorded historical uses and its potential for nineteenth century and earlier occupations of Indigenous and non-Indigenous origin. The objectives of a Stage 1 background study are:

1. to provide information about the property's geography, history, previous archaeological fieldwork and current land condition;
2. to evaluate in detail the property's archaeological potential which will support recommendations for Stage 2 property assessment for all or parts of the property if warranted; and
3. to recommend appropriate strategies for Stage 2 property assessment.

If a property is determined to have archaeological potential, Stage 2 archaeological assessment is required.



2.2.2 Stage 2: Field Assessment

This Stage of the archaeological assessment process is to determine if archaeological sites exist on the property. This is completed by undertaking a surface and subsurface inspection of the property for archaeological resources.

As outlined in the *Standards and Guidelines for Consultant Archaeologists, 2011*, a Stage 2 archaeological assessment provides an overview of archaeological resources on the property and determines whether any of the resources might be artifacts and archaeological sites with cultural heritage value or interest. The objectives of a Stage 2 field assessment are:

1. to document all archaeological resources on the property;
2. to determine whether the property contains archaeological resources requiring further assessment;
and
3. to recommend appropriate Stage 3 assessment strategies for archaeological sites identified.

If archaeological sites are identified that have further cultural heritage value or interest, Stage 3 archaeological assessment is required.

2.2.3 Stage 3: Evaluation

This Stage of the archaeological assessment process is to evaluate the information from an identified site and decide on mitigation. This is completed by undertaking a systematic surface collection and sample excavation to define the age, cultural affiliation, and extent of the archaeological site.

As outlined in the *Standards and Guidelines for Consultant Archaeologists, 2011*, a Stage 3 archaeological assessment assesses the cultural heritage value or interest of each archaeological site identified in Stage 2 to determine whether it has been sufficiently documented or if further measures are required to protect or document the site fully. The objectives of a Stage 3 evaluation are:

1. to determine the extent of the archaeological site and the characteristics of the artifacts;
2. to collect a representative sample of artifacts;
3. to assess the cultural heritage value or interest of the archaeological site; and
4. to determine the need for mitigation of the development impacts and recommend appropriate strategies for mitigation and further conservation.

If the archaeological site is identified to have further cultural heritage value or interest, Stage 4 archaeological assessment is required.



2.2.4 Stage 4: Mitigation

This Stage of the archaeological assessment process is to preserve the archaeological site. This is completed by undertaking the extensive excavation and documentation of the archaeological site or implementing an avoidance and protection strategy for the archaeological site.

As outlined in the *Standards and Guidelines for Consultant Archaeologists, 2011*, a Stage 4 archaeological assessment includes implementing long-term protection strategies for archaeological sites to be impacted by the project or, if protection is not a viable option, the consultant archaeologist conducts an excavation to document the site and remove the artifacts before construction begins. For the latter, the objectives of a Stage 4 excavation are:

1. to document the archaeological context, cultural features, and artifacts for all parts of the archaeological site;
2. to document the removal of the archaeological site; and
3. to preserve the information about the archaeological site for future study.

After the archaeological site has been successfully mitigated from development impacts through either excavation or avoidance and protection, the archaeological assessment process is complete.



2.3 Summary of Registered Archaeological Sites within 70 m of the ORMT

Ontario's Past Portal (PastPort) is the Ontario government's secure online archaeology and heritage portal. Licensed archaeologists use PastPort to report their archaeological work to the MCM, including information about the archaeological sites they discover.

PastPortal houses:

- Ontario Archaeological Sites Database
- Ontario Public Register of Archaeological Reports

Because they are sensitive and easily damaged, the locations of archaeological sites are not available to the general public. This information can be accessed by licensed archaeologists through PastPortal or by organizations or individuals through a data sharing agreement with the MCM.

Table 2 presents a summary of all registered archaeological sites retaining further cultural heritage value or interest (CHVI) recorded within the Ontario Archaeological Sites Database (OASD) as being located within 70 m of the ORMT. A 70 m buffer has been identified in order to meet current protection and monitoring buffers of sites within the S & Gs. This archaeological site data was drawn from the OASD. Further research may be necessary to confirm the specific locations of these sites and their relationship to the ORMT.

A future goal once a data sharing agreement is in place is to gain site location data for the ORMPPA so it is understood where known archaeological sites are located and ensure that sites that still have cultural heritage value and interest (i.e. have not been fully excavated) are either avoided and protected by proposed works or that additional archaeological assessment is completed.

2.4 Entering into a Data Sharing Agreement with the MCM

The ORMLT or its affiliated organizations may wish to enter into a data sharing agreement with the MCM to allow for access to, and use of, the site data in the OASD that pertains to the ORMPPA. A data sharing agreement will cover such matters as the use of, and access to the site data, and the confidentiality and security issues pertaining to the release of the information.

Access to and use of the site data will allow for informed decision making when trail maintenance and construction activities are contemplated or undertaken by the GF, ORMLT or the ORTA. It will also help inform land securement and stewardship practices within the ORMPPA.

It is important to note that the MCM will provide the site data "as is" and will make no warranty, either express or implied, including but not limited to, the accuracy and completeness of the data, warranties of merchantability and fitness for a particular purpose.

Though each data sharing agreement with the MCM is unique it is anticipated that the MCM will insist that the ORMLT or any other organizations party of the agreement (the Recipient) be bound by the following terms:

1. The Recipient shall only use the site data for a necessary purpose.
2. The Recipient shall not in any manner or in any way make any site data available.
3. The Recipient shall give notice to the MCM in writing immediately upon becoming aware that any data has been released, or becomes available in any way, to any person, group or organization, in any format.



4. If the Recipient notices corrections that need to be made to the Data, the Recipient will submit corrections through Ontario's Past Portal ("Pastport") database in the case that the Recipient is a licensee or by e-mail to archaeology@ontario.ca.
5. If any products are being generated from the site data, the Recipient will ensure that no site data is reproduced or disclosed in such a way that would put an archaeological site at risk. This includes and is not limited to disclosing an archaeological site location in the public domain.

2.4.1 Steps to Enter into a Data Sharing Agreement

This must be directly negotiated between the ORMLT and the MCM and often involves a formal contract as an outcome. This process can take a while to negotiate and resolve. A sample agreement has been included as Appendix A to help arrange your internal requirements.

Table 1: Registered Archaeological Sites Possessing Further CHVI within 70 m of the ORMT

Borden #	Site Name	PIF Licensee/Researcher	Affinity	Site Type	Site Age
AlGv-349	-	PIF R182-006-2009 Licensee: Marganit Kenedy	Indigenous	Scatter	Unknown
AlGv-240	Janus	PIF P019-066-2006 Licensee: Catherine Crinnon	Indigenous	Scatter	Unknown
BaGq-8	Taylor	Licence 78-D-0231 Researcher: Arthur Roberts	Indigenous	Findspot	Archaic Period
BaGp-5	Ransberry	Licence 78-D-0231 Researcher: Arthur Roberts	Indigenous	Findspot	Unknown
BaGp-62	CLAR03	PIF P1074-0166-2024 Licensee: Caitlyn Howard	Indigenous	Scatter	Late Woodland Period
BaGp-61	CLAR02	PIF P1074-0166-2024 Licensee: Caitlyn Howard	Indigenous	Scatter	Late Woodland Period
BaGn-103	-	Licence 78-D-0231 Researcher: Arthur Roberts	Indigenous	Scatter	Unknown
BaGn-72	Buttar	Licence 1985-71-001-1985 Researcher: Lawrence Jackson	Indigenous	Scatter	Paleo and Archaic Periods
BaGn-76	Inner City Angels	Licence 1985-71-001-1985 1986-47-001-1986 Researcher: Lawrence Jackson	Indigenous	Scatter	Late Paleo, Late Archaic, Early Woodland Periods



2.5 Next Steps Should the ORMT Be Rerouted or Expanded Through New Construction or Should Additional Lands be Secured

If additional lands are to be secured by the ORMLT within the ORMPPA or if the ORMT is to be rerouted or expanded it is best practice that an archaeological assessment be conducted by a professionally licensed archaeologist. This assessment should be completed prior to any construction impacts. This will include completing all required Archaeological Assessments (i.e. Stage 1, Stage 2, Stage 3 and Stage 4, as required) as early as possible, prior to the completion of design, and in advance of any ground disturbance.

The licenced archaeologist shall submit an Archaeological Report to the MCM as per their licencing agreement. Archaeological clearance from the MCM is required prior to the Contractor commencing work.

The sections of the ORMT within the 70 m buffers surrounding the archaeological sites described in Section 2.3 are areas of ongoing archaeological concern. A licensed archaeologist should be contacted prior to ground disturbing activities in these areas.

All work shall be performed in accordance with applicable law, including but not limited to the OHA, the MCM's *Standards and Guidelines for Consultant Archaeologists* (2011), and *Engaging Aboriginal Communities in Archaeology: A Draft Bulletin for Consultant Archaeologists in Ontario* (2011).

2.6 Process for Engaging Indigenous Monitors and Engagement with Indigenous Communities and Nations

This Document has been developed to support efforts to further relationships with Indigenous Communities and Nations within the ORMPPA. The archaeological assessment process provides an opportunity to build relations with Indigenous Communities and Nations by honouring and amplifying histories and cultures and supporting deep connections and responsibilities to care for the land.

Early engagement in the archaeological assessment process (i.e. at Stage 1 and 2) is critical to facilitate knowledge-sharing, support consideration of Indigenous interests in land use decision-making and support the identification of potential impacts of decisions on the exercise of Aboriginal or treaty rights. It is important to ensure Indigenous Communities and Nations interests are considered when identifying, protecting and managing archaeological resources.

It should be noted that the MCM provides notification to local Indigenous Communities and Nations of archaeological work being undertaken in their area of interest.

The Contracting Authority is responsible for all Indigenous Community and Nations Engagement during the archaeological assessment process.

The Contracting Authority will either liaise directly with the applicable Indigenous Communities and Nations or delegate that responsibility to the consultant archaeologist retained to complete an archaeological assessment.

A list of Indigenous Communities and Nations most likely to expect active engagement in any archaeological assessments completed within the ORMPPA, up to and including the in-field participation of their representatives during the archaeological assessment and review of the archaeological report, as well as key contacts for those communities is provided in Appendix B. This contact list is current as of March 2026.



3 PROTOCOL FOR THE DISCOVERY OF HUMAN REMAINS

Human remains finds are very sensitive situations to manage. It is important that these finds are treated respectfully, that there is effective and immediate communication between all parties, and that the reporting and investigation requirements are followed. The following presents the procedural advice and guidance in addition to the protocol for the discovery of human remains. Flow charts depicting an overview of the process are presented in Sections 3.1.5 and 3.2.4 but these are not meant to replace the information in Sections 3.1.1 to 3.3.4. and 3.2.1 to 3.2.3.

3.1 Protocol for Contracting Authority Initiated Works on the ORMT

3.1.1 *Designation of Contracting Authority Contact and Contractor Team Lead*

The Contracting Authority and the Contractor must each designate an individual responsible for the execution of the actions outlined in the protocol. These persons must be provided with the relevant contact information of each other to facilitate communications in the event the protocol must be implemented.

3.1.2 *Communication to Construction Crews*

Prior to initiation of ground-disturbing activities, all personnel working on site should be informed by the Contractor Team Lead of the potential for human remains to be discovered. The details of this protocol should be reviewed with all personnel to ensure that the proper procedures are followed.

3.1.3 *Guidance on Treatment of Human Remains*

Should human remains be encountered during construction, certain precautions should be taken to ensure they are protected and respected while moving the investigation process.

1. **Notifications:** Should the remains be confirmed as human by a licenced archaeologist, or if the Contracting Authority's archaeologist is uncertain and requires confirmation from the coroner, the Contracting Authority Contact shall notify the Coroner as soon as practical.
2. **Controlling Communications:** Given the sensitivity of burial sites, the need to protect their location, and ensure efficient and appropriate communication, it is best practice to visit the local Police station to report the find rather than call to provide notification. In all cases, clear instructions should be given to the Police to avoid the use of public broadcast devices (e.g., scanners) when communicating the find to avoid visits by members of the press who may monitor communications by Police dispatch. The Police may be accompanied by the Coroner or may notify the Coroner by telephone.
3. **Photography Policy:** Photographs of human remains should not be taken except at the direction of the licenced archaeologist or coroner to assist in confirming the remains are human. Photographs of the human remains must not be circulated elsewhere.

3.1.4 *Protocol*

In the event that human remains are discovered during construction activities initiated by the Contracting Authority, the following measures shall be taken:



1. The Contractor Team Lead will suspend all construction activities immediately in the vicinity of the potential find and notify the Contracting Authority Contact.
2. The Contracting Authority will ensure that the Contractor closes the relevant section of the trail to the public.
3. The Contractor Team Lead will secure the find using boundary markers and temporary fencing.
4. The Contracting Authority Contact will log the event including the following details:
 - a. Date and time
 - b. Description of activity that resulted in the find
 - c. Description of the find
1. If it is uncertain that the find represents human remains, Contracting Authority shall contact a licenced archaeologist to assist in that determination.
 - a. At the direction of the licenced archaeologist, photos may be taken of the find for circulation to the licenced archaeologist (See Section 3.2). No other photos should be taken of the find, and the photos should not be circulated elsewhere.
 - b. If the licenced archaeologist can determine with confidence the find is not human, then the Contracting Authority Contact shall update the log to that effect. The Contracting Authority Contact will in turn notify the Contractor Team Lead. At this point the investigation may cease and work may recommence. In order to maintain communications and prevent misunderstandings, the Contracting Authority should consider informing Indigenous Communities and Nations of this original find and the determination that it is not human.
 - c. If the licenced archaeologist confirms the remains are human, or is uncertain, the archaeologist will notify the Contracting Authority Contact. Then the remainder of this protocol shall be followed.
2. The Contracting Authority Contact shall confirm in writing to the Contractor the stop work order and direct the construction supervisor to secure the find. The site shall be secured by the Contractor or its designate until the authorities arrive to ensure the find is protected. Protective measures should be continued following the Police investigation and until all regulatory requirements have been met. The archaeologist may contact Contractor Team Lead concurrently with the Contracting Authority Contact to request assistance in providing resources to facilitate the protective measures.
 - a. Ideally, confirmed or suspected human remains should NOT be removed from the site.
 - b. The site should be secured using boundary markers and temporary fencing or barriers.
 - c. Privacy screens can be utilized to ensure visibility of the find is restricted, which may be particularly important if the remains are located in high-traffic areas.
 - d. At no point in time should members of the public, press, or construction crew be permitted access to the find. The Contractor may be permitted to access the site once it is released by the police and coroner.
3. The Contracting Authority Contact will immediately notify the following:
 - The local police department



- A licenced archaeologist, if not previously notified

As per Section 3.2, it is best practice to visit the local Police station to report the find rather than call to provide notification. In all cases, clear instructions should be given to the Police to avoid the use of public broadcast devices (e.g., scanners) when communicating the find to avoid visits by members of the press who may monitor communications by Police dispatch.

The Police may be accompanied by the Coroner or may notify the Coroner by telephone.

4. The Police and Coroner shall be permitted to carry out an investigation of the find. If the Police investigation determines that the human remains are of strictly historical interest, and not a crime scene, the find falls under the jurisdiction of the Ministry of Public and Business Service Delivery (MPBSD), Registrar of Burial Sites. Upon release of the find by the Police and their determination that it is not of forensic concern, the Contracting Authority shall notify its licenced archaeologist.
5. The Coroner will notify the Registrar of Burial Sites of the find and provide information from the police and coroner's investigation. The current Registrar is:
 - Registrar of Burial Sites, MPBSD: 416-212-7499
6. The Registrar will provide instructions for next steps and requirements for protecting and securing the site until all necessary regulatory steps can be taken. The Registrar will provide written notification to the landowner regarding their legal obligations under the *Funeral, Burial and Cremation Services Act*. Often, the Registrar will order the landowner to conduct an investigation under Section 96 of the Act (see Appendix C).

For the purposes of an investigation of a burial discovery, the "landowner" is considered to be the individual or body/organization who owns the land within which the discovery was made. The Registrar may require the landowner to enter into an agreement with the representative of the deceased that establishes the ultimate care and disposition of the remains.

For discoveries within the bounds of the municipally owned rights-of way (ROWs), the landowner to be contacted would be the relevant municipality.

Should the remains be identified as ancestral to Indigenous Communities and Nations, the Contracting Authority shall contact the Indigenous Communities and Nations as directed by the Registrar of Burials, if not previously notified.

7. The Ministry of Citizenship and Multiculturalism (MCM) should also be notified.

Archaeology Programs Unit, MCM: 647-964-8951

8. The Contractor's work at the find site can only resume once all regulatory requirements have been met and the Registrar has given consent.

3.1.5 Flow Chart Illustrating the Protocol for the Discovery of Human Remains during Contracting Authority Initiated Works on the ORMT

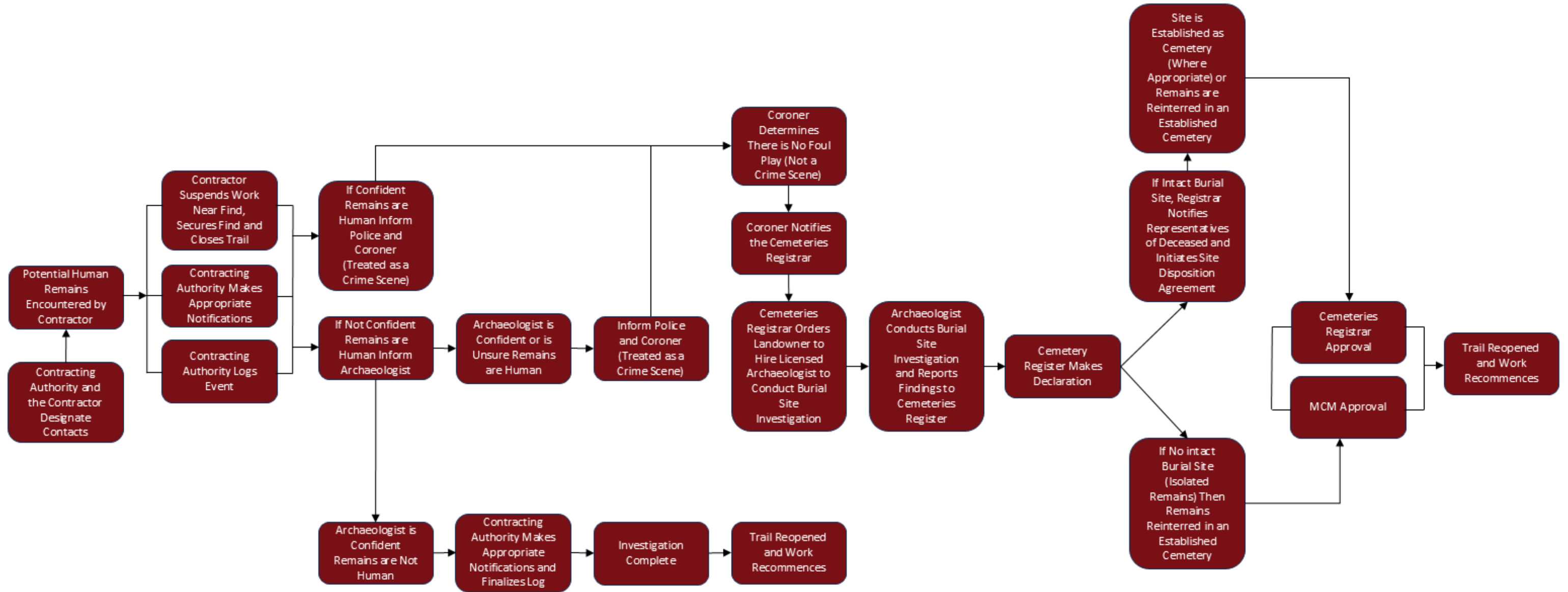


Figure 2: Overview of the Protocol for the Discovery of Human Remains during Contracting Authority Initiated Works on the ORMT



3.2 Protocol for Inadvertent Discovery of Human Remains by Member of the Public on the ORMT

3.2.1 Designation of Contracting Authority Contact

The Contracting Authority must designate an individual responsible for the execution of the actions outlined in the protocol.

3.2.2 Guidance on Treatment of Human Remains

Should human remains be encountered member of the public and reported to the Contracting Authority, certain precautions should be taken to ensure they are protected and respected while moving the investigation process.

1. Notifications: Should the remains be confirmed as human by a licenced archaeologist, or if the Contracting Authority's archaeologist is uncertain and requires confirmation from the coroner, the Contracting Authority Contact shall notify the Coroner as soon as practical.
2. Controlling Communications: Given the sensitivity of burial sites, the need to protect their location, and ensure efficient and appropriate communication, it is best practice to visit the local Police station to report the find rather than call to provide notification. In all cases, clear instructions should be given to the Police to avoid the use of public broadcast devices (e.g., scanners) when communicating the find to avoid visits by members of the press who may monitor communications by Police dispatch. The Police may be accompanied by the Coroner or may notify the Coroner by telephone.
3. Photography Policy: Photographs of human remains should not be taken except at the direction of the licenced archaeologist or coroner to assist in confirming the remains are human. Photographs of the human remains must not be circulated elsewhere.

3.2.3 Protocol

In the event that human remains are discovered member of the public and reported to the Contracting Authority, the following measures shall be taken:

1. The Contracting Authority will ensure that the area of the find is secure using boundary markers and temporary fencing.
2. The Contracting Authority will ensure that the relevant section of the trail is closed to the public.
3. The Contracting Authority Contact will log the event including the following details:
 - a. Date and time
 - b. Description of activity that resulted in the find
 - c. Description of the find
4. If it is uncertain that the find represents human remains, Contracting Authority shall contact a licenced archaeologist to assist in that determination.



- a. At the direction of the licenced archaeologist, photos may be taken of the find for circulation to the licenced archaeologist (See Section 3.2.1). No other photos should be taken of the find, and the photos should not be circulated elsewhere.
 - b. If the licenced archaeologist can determine with confidence the find is not human, then the Contracting Authority Contact shall update the log to that effect. At this point the investigation may cease. In order to maintain communications and prevent misunderstandings, the Contracting Authority should consider informing Indigenous Communities and Nations of this original find and the determination that it is not human.
 - c. If the licenced archaeologist confirms the remains are human, or is uncertain, the archaeologist will notify the Contracting Authority Contact. Then the remainder of this protocol shall be followed.
5. The site shall be secured by the Contracting Authority or its designate until the authorities arrive to ensure the find is protected. Protective measures should be continued following the Police investigation and until all regulatory requirements have been met. The archaeologist may the Contracting Authority Contact to request assistance in providing resources to facilitate the protective measures.
- a. Ideally, confirmed or suspected human remains should NOT be removed from the site.
 - b. The site should be secured using boundary markers and temporary fencing or barriers.
 - c. Privacy screens can be utilized to ensure visibility of the find is restricted, which may be particularly important if the remains are located in high-traffic areas.
 - d. At no point in time should members of the public, press, or construction crew be permitted access to the find. Access to the site is permitted once it is released by the police and coroner.
6. The Contracting Authority Contact will immediately notify the following:
- The local police department
 - A licenced archaeologist, if not previously notified

As per Section 3.2.1, it is best practice to visit the local Police station to report the find rather than call to provide notification. In all cases, clear instructions should be given to the Police to avoid the use of public broadcast devices (e.g., scanners) when communicating the find to avoid visits by members of the press who may monitor communications by Police dispatch.

The Police may be accompanied by the Coroner or may notify the Coroner by telephone.

7. The Police and Coroner shall be permitted to carry out an investigation of the find. If the Police investigation determines that the human remains are of strictly historical interest, and not a crime scene, the find falls under the jurisdiction of the Ministry of Public and Business Service Delivery (MPBSD), Registrar of Burial Sites. Upon release of the find by the Police and their determination that it is not of forensic concern, the Contracting Authority shall notify its licenced archaeologist.
8. The Coroner will notify the Registrar of Burial Sites of the find and provide information from the police and coroner's investigation. The current Registrar is:
 - Registrar of Burial Sites, MPBSD: 416-212-7499



9. The Registrar will provide instructions for next steps and requirements for protecting and securing the site until all necessary regulatory steps can be taken. The Registrar will provide written notification to the landowner regarding their legal obligations under the *Funeral, Burial and Cremation Services Act*. Often, the Registrar will order the landowner to conduct an investigation under Section 96 of the Act (see Appendix C).

For the purposes of an investigation of a burial discovery, the “landowner” is considered to be the individual or body/organization who owns the land within which the discovery was made. The Registrar may require the landowner to enter into an agreement with the representative of the deceased that establishes the ultimate care and disposition of the remains.

For discoveries within the bounds of the municipally owned rights-of way (ROWs), the landowner to be contacted would be the relevant municipality.

Should the remains be identified as ancestral to Indigenous Communities and Nations, the Contracting Authority shall contact the Indigenous Communities and Nations as directed by the Registrar of Burials, if not previously notified.

10. The Ministry of Citizenship and Multiculturalism (MCM) should also be notified.

Archaeology Programs Unit, MCM: 647-964-8951

The Contracting Authority shall restrict access to the find site through the closing of the trail section until all regulatory requirements have been met and the Registrar has given consent.

3.2.4 Flow Chart Illustrating the Protocol for the Inadvertent Discovery of Human Remains by Member of the Public on the ORMT

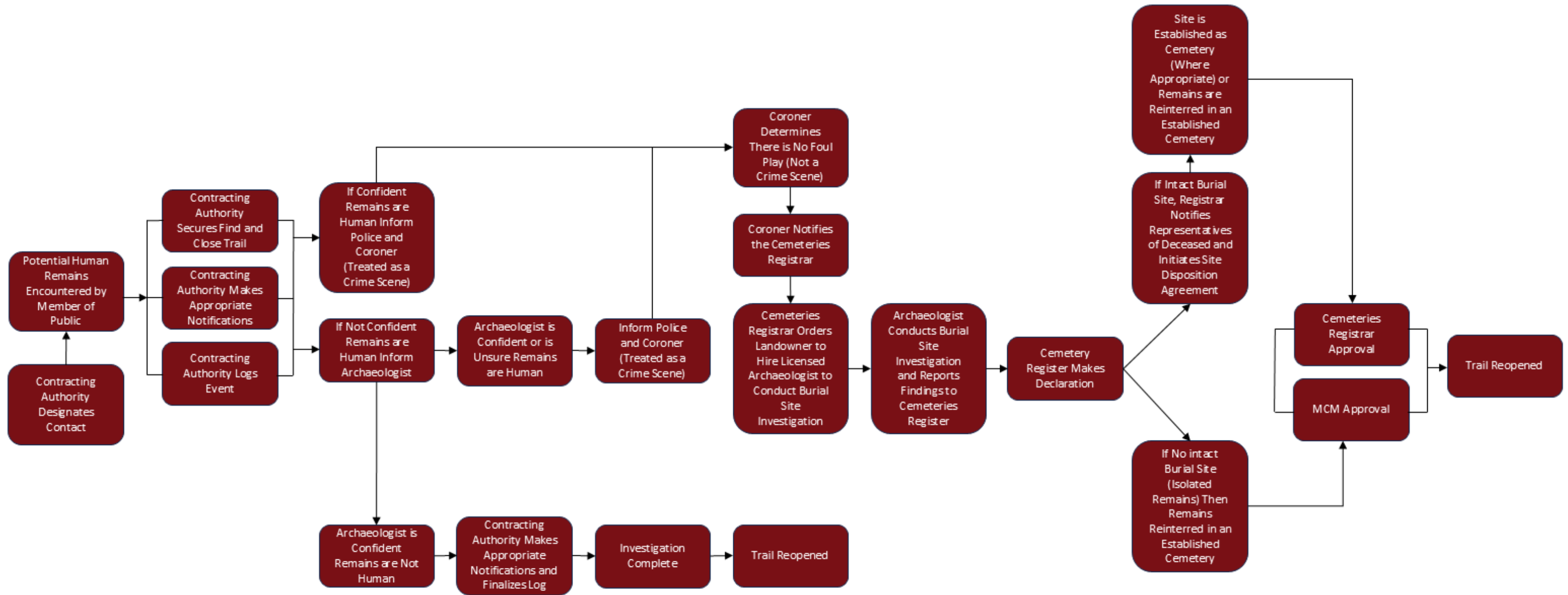


Figure 3: Overview of the Protocol for the Discovery of Human Remains by Member of the Public on the ORMT



4 PROTOCOL FOR THE DISCOVERY OF UNDOCUMENTED ARCHAEOLOGICAL RESOURCES

The following provides procedural advice and guidance in addition to the protocol for the discovery of undocumented archaeological resources. The protocol provides information regarding who to notify of the discovery, isolating and protecting the resource to the extent feasible, and documenting discoveries to meet MCM requirements. Flow charts depicting an overview of the process are presented in Section 4.1.4 and 4.2.3, but these are not meant to replace the information in Sections 4.1.1 to 4.1.3 and 4.2.1 and 4.2.2.

4.1 Protocol for Contracting Authority Initiated Works on the ORMT

4.1.1 Designation of Contracting Authority Contact and Contractor Team Lead

The Contracting Authority and the Contractor must each designate an individual responsible for the execution of the actions outlined in the protocol. These persons must be provided with the relevant contact information of each other to facilitate communications in the event the protocol must be implemented.

4.1.2 On-Site Communication by Contractor

Prior to initiation of ground-disturbing activities, the Contracting Authority instruct the Contractor that all personnel working on site must be informed by the Contractor Team Lead of the potential for archaeological resources to be discovered. Examples of archaeological resources include:

- Indigenous artifacts such as lithic (stone) tools and debris, pottery, and items made from bone and copper;
- Items manufactured in the 18th and 19th centuries such as ceramic dishware, glass bottles, nails, and items made from metal and bone
- Structural remnants such as brick or stone walls and foundations, wells

The details of this protocol should be reviewed with all personnel to ensure that the proper procedures are followed.

4.1.3 Protocol

In the event that suspected archaeological resources are discovered during construction activities initiated by the Contracting Authority, the following protocol will be followed:

1. The Contractor Team Lead must suspend all construction activities immediately in the vicinity of the potential find and notify Contracting Authority Contact.
2. The Contractor Team Lead will oversee securing the area of the find using boundary markers and temporary fencing.
3. The Contracting Authority will log the potential archaeological resource including the following details:
 - a. Date and time
 - b. Description of activity that resulted in the potential archaeological resource



c. Description of the potential archaeological resource

4. The Contracting Authority will contact a licenced archaeologist to visit the site to determine if the suspected find is in fact archaeological and, if it is, whether it warrants further investigation.
5. If the archaeologist determines that the potential archaeological resource is not archaeological or that the find does not warrant further investigation, the archaeologist will notify the Contracting Authority Contact who will update the log, and the investigation is considered complete. The Contracting Authority will then notify the Contractor Team Lead that work may recommence.
6. If the archaeologist determines that further investigation is warranted, the archaeologist will notify the Contracting Authority Contact. The Contracting Authority will then notify the Contractor Team Lead with any information on additional protective measures required.
7. In consultation with the Contracting Authority, and the MCM, the licensed archaeologist shall develop an appropriate mitigation plan in keeping with the Province of Ontario's 2011 *Standards and Guidelines for Consultant Archaeologists*. Depending on the location, nature, spatial extent of the find and intended construction, possible mitigative measures could include:
 - Avoidance of the archaeological resource or feature by relocating the area of construction impact;
 - Mapping, drawing and photo-documentation of the archaeological resource; and
 - Full excavation.
8. The licenced archaeologist will be permitted sufficient time to ensure the mitigation of the resource meets applicable standards, those being the MCM S & Gs and Ontario Health and Safety Act requirements, and shall mobilize sufficient staff and resources to ensure the mitigation occurs in a timely fashion, to minimize delay in construction activities.
9. Once the mitigation strategies are complete or implemented, the licensed archaeologist will notify the Contracting Authority Contact. Once the MCM notifies the archaeologist that provincial concerns have been addressed, the Contracting Authority shall notify the Contractor Team Lead before the work can resume in the area of the find.
10. The Contracting Authority is responsible for keeping a log of all pertinent correspondence between all parties related to the discovery.

4.1.4 Flow Chart Illustrating the Protocol for the Discovery of Undocumented Archaeological Resources during Contracting Authority Initiated Works on the ORMT

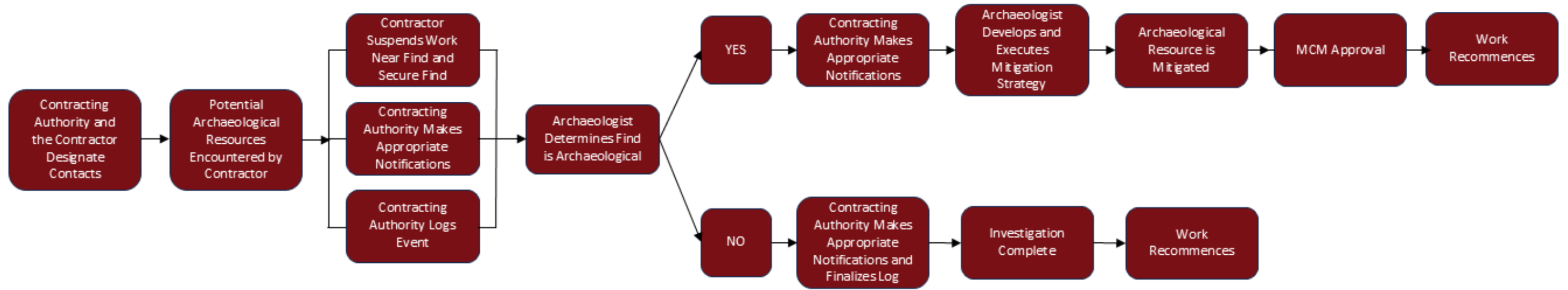


Figure 4: Overview of the Protocol for the Discovery of Undocumented Archaeological Resources during Contracting Authority Initiated Works on the ORMT



4.2 Protocol for Inadvertent Discovery of Archaeological Resources by Member of the Public on the ORMT

4.2.1 Designation of Contracting Authority Contact

The Contracting Authority must designate an individual responsible for the execution of the actions outlined in the protocol.

4.2.2 Protocol

In the event that suspected archaeological resources are discovered by a member of the public and reported to the Contracting Authority, the following protocol will be followed:

1. The Contracting Authority will ensure that the area of the find is secured using boundary markers and temporary fencing.
2. The Contracting Authority will log the potential archaeological resource including the following details:
 - a. Date and time
 - b. Description of activity that resulted in the potential archaeological resource
 - c. Description of the potential archaeological resource
3. The Contracting Authority will contact a licenced archaeologist to visit the site to determine if the suspected find is in fact archaeological and, if it is, whether it warrants further investigation.
4. If the archaeologist determines that the potential archaeological resource is not archaeological or that the find does not warrant further investigation, the archaeologist will notify the Contracting Authority Contact who will update the log, and the investigation is considered complete.
5. If the archaeologist determines that further investigation is warranted, the archaeologist will notify the Contracting Authority Contact. The Contracting Authority will then ensure the implementation of any additional protective measures required.
6. In consultation with the Contracting Authority, and the MCM, the licensed archaeologist shall develop an appropriate mitigation plan in keeping with the Province of Ontario's 2011 *Standards and Guidelines for Consultant Archaeologists*. Depending on the location, nature, spatial extent of the find and intended construction, possible mitigative measures could include:
 - Avoidance of the archaeological resource or feature by relocating the area of construction impact;
 - Mapping, drawing and photo-documentation of the archaeological resource; and
 - Full excavation.
7. The licenced archaeologist will be permitted sufficient time to ensure the mitigation of the resource meets applicable standards, those being the MCM S & Gs and Ontario Health and Safety Act requirements, and shall mobilize sufficient staff and resources to ensure the mitigation occurs in a timely fashion, to minimize delay in construction activities.



8. Once the mitigation strategies are complete or implemented, the licensed archaeologist will notify the Contracting Authority Contact. Once the MCM notifies the archaeologist that provincial concerns have been addressed the Contracting Authority Contact shall be notified by the licenced archaeologist

The Contracting Authority is responsible for keeping a log of all pertinent correspondence between all parties related to the discovery.

4.2.3 Flow Chart Illustrating the Protocol for the Inadvertent Discovery of Archaeological Resources by Member of the Public on the ORMT

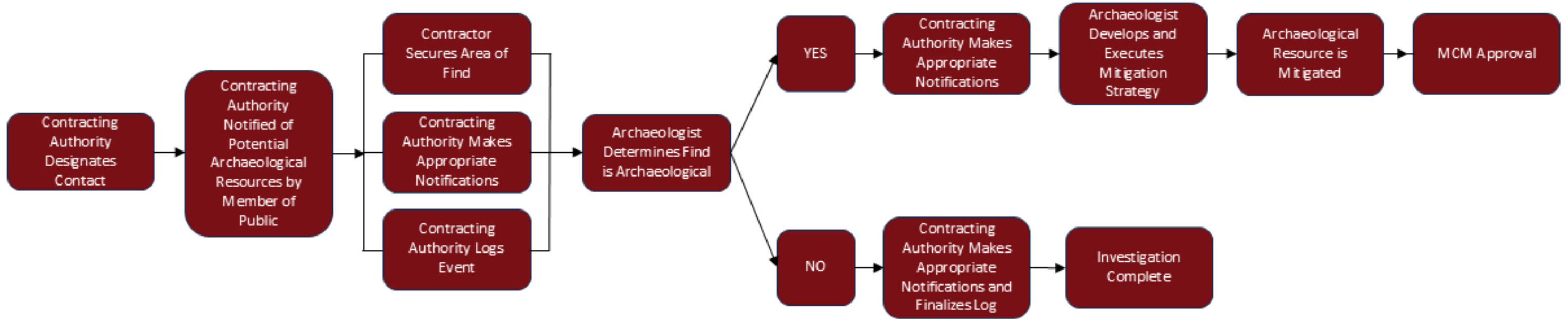


Figure 5: Overview of the Protocol for the Inadvertent Discovery of Archaeological Resources by Member of the Public on the ORMT



5 COMPLIANCE PROTOCOL

5.1 Process for Compliance

The Contracting Authority is responsible for commissioning archaeological assessments where required. The Contractor is responsible for ensuring compliance with this Document.

5.2 Advice on Compliance with the Ontario Heritage Act

It is an offence under Sections 48 and 69 of the *Ontario Heritage Act* for any party other than a licensed archaeologist to make any alteration to a known archaeological site or to remove any artifact or other physical evidence of past human use or activity from the site, until such time as a licensed archaeologist has completed archaeological fieldwork on the site, submitted a report to the Minister stating that the site has no further cultural heritage value or interest, and the report has been filed in the Ontario Public Register of Archaeological Reports referred to in Section 65.1 of the *Ontario Heritage Act*.

Should previously undocumented archaeological resources be discovered, they may be a new archaeological site and therefore subject to Section 48 (1) of the *Ontario Heritage Act*. The proponent or person discovering the archaeological resources must cease alteration of the site immediately and engage a licensed consultant archaeologist to carry out archaeological fieldwork, in compliance with Section 48 (1) of the *Ontario Heritage Act*.

The *Funeral, Burial and Cremation Services Act, 2002*, S.O. 2002, c.33 (when proclaimed in force) requires that any person discovering human remains must notify the police or coroner and the Registrar of Cemeteries at the Ministry of Public and Business Service Delivery and Procurement.

Archaeological sites recommended for further archaeological fieldwork or protection remain subject to Section 48(1) of the *Ontario Heritage Act* and may not be altered, or have artifacts removed from them, except by a person holding an archaeological licence.



6 APPENDIX A: SAMPLE DATA SHARING AGREEMENT WITH THE MINISTRY OF CITIZENSHIP AND MULTICULTURALISM

THIS AGREEMENT made as of the __24__ day of __May__ 2024.

BETWEEN

HIS MAJESTY THE KING IN RIGHT
OF ONTARIO as represented by

Ministry of Citizenship and Multiculturalism
400 University Avenue, 5th Floor
Toronto, Ontario
M7A 2R9

(the "Ministry")

TMHC Inc.
1108 Dundas Street, Unit 105
London, Ontario
N5W 3A7

(the "Recipient")

WHEREAS the Ministry under the authority of the *Ontario Heritage Act* licences archaeologists and requires licensees to submit reports containing full details of work done under a licence including the location of Archaeological Sites in the province and related Data;

AND WHEREAS, the Recipient has requested Data for the purpose of completing an archaeological management plan for Grey County;

AND WHEREAS the Ministry is willing to provide Data to the Recipient for the same purpose;



NOW THEREFORE, the parties agree as follows:

1.0 Definitions

In this Agreement:

“Archaeological Site” means any property that contains an artifact or any other physical evidence of past human use or activity that is of cultural heritage value or interest.

“Data” means archaeological information held or collected by the Ministry including but not limited to Archaeological Sites, Site Leads and Non-Diagnostic find spots within Grey County, as illustrated in Schedule A - “Grey County”.

“Non-Diagnostic Find Spot” (NDFS) means one or more undiagnostic artifacts that do not meet the criteria for receiving a Borden number, which is a number assigned by the Ministry for an Archaeological Site.

“Project” means the creation of an archaeological management plan for Grey County.

“Site Lead” means property where there is some indication a site may be present (oral account, historical reference etc.) but where a licenced archaeologist has not yet undertaken archaeological fieldwork on the property to confirm the presence of an artifact or any other physical evidence of past human use or activity that is of cultural heritage value or interest.”

2.0 Terms of Agreement

2.1 The Recipient shall only use the Data for a necessary purpose.

2.2 The Recipient shall not in any manner or in any way make any Data available to any person, group or organization.

2.3 The Recipient shall give notice to the Ministry in writing immediately upon becoming aware that any Data has been released, or becomes available in any way, to any person, group or organization, in any format.

2.4 If the Recipient notices corrections that need to be made to the Data, the Recipient will submit corrections through Ontario’s Past Portal (“Pastport”) database in the case that the Recipient is a licensee or by e-mail to archaeology@ontario.ca.

2.5 If any products are being generated from the Data, the Recipient will ensure that no Data is reproduced or disclosed in such a way that would put an Archaeological Site at risk. This includes and is not limited to disclosing an Archaeological Site’s location in the public domain.



2.6 The Ministry shall retain any intellectual property rights to any Data sets it provides to the Recipient.

3.0 Confidentiality and Security of Data

3.1 The Recipient shall not sell the Data. The Recipient shall not make the Data available to any person or body except as contemplated by 2.3. The security of the Data held by the Recipient is the sole responsibility of the Recipient which is not transferable.

3.2 The Recipient shall keep the Data in a physically secure location which is accessible only to the Recipient. If stored on an electronic system, the Recipient will ensure measures have been put in place to prevent unauthorized access to the Data (e.g. password protection, encryption etc.).

4.0 Liability

4.1 The Ministry provides the Data "as is" and makes no warranty, either express or implied, including but not limited to, the accuracy and completeness of the Data, warranties of merchantability and fitness for a particular purpose. The Ministry shall not be liable for any direct, indirect, special or consequential, or any other damages or loss arising from or in connection with the use of the Data.

5.0 Freedom of Information and Protection of Privacy Act

5.1 The Recipient acknowledges that the Ministry is bound by the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.F. 31, as amended from time to time, and that any information provided to the Ministry in connection with this Agreement is subject to disclosure in accordance with the requirements of that Act. This acknowledgement shall not be construed as a waiver of any right to object to the release of this Agreement or of any information or documents exchanged pursuant to this Agreement.

6.0 Termination

6.1 The Agreement shall remain in effect until terminated at Project completion.

7.0 Notice

7.1 Under this Agreement the parties will provide notice to one another in writing using the following contact information:



For the Ministry:

Manager of the Archaeology Program Unit
Citizenship, Inclusion and Heritage Division
Ministry of Citizenship and Multiculturalism
Email: archaeology@ontario.ca

For the Recipient:

Holly Martelle
Principal
TMHC Inc.
Email: hmartelle@tmhc.ca

7.2 Notice will be deemed to have been given:

- a) in the case that the Ministry uses postage-prepaid mail, five (5) business days after the notice is mailed; or
- b) in the case of email, the same day the email was sent, unless the email was sent after 4 pm. If the email was sent between 4 pm and midnight, notice will be deemed to have been given the following business day.

7.3 The Recipient and Ministry shall notify one another in the event the contact information in 7.1 changes.

8.0 Survival

8.1 Sections 1, 2, 3, 4, 5, 6 and 8 shall survive termination of this Agreement.

9.0 Schedules and Entire Agreement

9.1 The following schedules are attached to and form part of the Agreement:

Schedule A – “Grey County”

9.2 The Agreement, including the schedule(s) attached hereto constitutes the entire agreement between the Ministry and the Recipient with respect to the subject matter contained in the Agreement and supersedes all prior oral or written representations and agreements.



10.0 Amendments

10.1 Except as otherwise provided for, the Agreement may only be amended by a written agreement duly executed by the Ministry and the Recipient.

Ministry of Citizenship and Multiculturalism

Michelle Gittens Digital Signature of Michelle Gittens
Date: 20240524 13:27:49Z

Name: Michelle Gittens
Title: Assistant Deputy Minister
Citizenship, Inclusion and Heritage Division

Date: _____

I have authority to bind the Ministry.

TMHC Inc.

May 27, 2024

Name: Holly Martelle
Title: Principal

Date: _____

I have authority to bind the Recipient.



Schedule A – “Grey County”





7 APPENDIX B: CONTACT LIST FOR INDIGENOUS COMMUNITIES THAT MAY HAVE AN INTEREST IN ORMT LANDS

The following is a list of Indigenous Communities and Nations most likely to expect active engagement in any archaeological assessments completed for the ORMT, up to and including the in-field participation of their representatives during the archaeological assessment and review of the archaeological report, as well as key contacts for those communities.

This contact list is current as of March 2026. A contacts may change, this list should be revisited periodically to ensure that the appropriate persons are identified.

It should be noted that the MCM provides notification to local Indigenous communities of archaeological work being undertaken in their area of interest.

Indigenous Community or Nation	Contact	Job Title or Position	Contact Information
Alderville First Nation	Dr. Julie Kapyrka	Consultation Coordinator	jkapyrka@alderville.ca
	Jordon MacArthur	Archaeology Program Administrator	jmacarthur@alderville.ca
Beausoleil (Chimnissing) First Nation		Consultation Liaison	bfnconsultation@chimnissing.ca
	Dana Monague	Lands Officer	danamonague@chimnissing.ca
Chippewas of Georgina Island First Nation	JL Porte	Community Consultation Worker	jl.porte@georginaisland.com
	Dillon Bickell	Community Consultation Worker	dbickell@ramafirstnation.ca consultation@ramafirstnation.ca
	Ben Cousineau		benc@ramafirstnation.ca
Curve Lake First Nation	Derek Paauw	Archaeology Program Admin	apadmin@curvelake.ca
	Paige Williams	Administration	paigew@curvelake.ca
Haudenosaunee Confederacy Chiefs Council (HCCC)	Todd Williams	Haudenosaunee Development Institute (HDI)	archaeology@hdi.land toddwilliams@hdi.land
	Raechelle Williams	Haudenosaunee Development Institute (HDI)	raechellewilliams@hdi.land
Hiawatha First Nation	Tom Cowie	Lands/Resource Consultation	tcowie@hiawathafn.ca
	Sean Davison	Lands/Resource Consultation	sdavison@hiawathafn.ca



PLANNING FOR ARCHAEOLOGY
Oak Ridges Moraine Planning Area and the Oak Ridges Moraine Trail

Indigenous Community Nation	or	Contact	Job Title or Position	or	Contact Information
		Mandy McGonigle	Archaeology Liaison		mmcgonigle@hiawathafn.ca
Mississaugas of the Credit First Nation		Adam LaForme	Manager of Archaeology		adam.laforme@mncfn.ca
		Megan DeVries	Manager of Consultations		megan.devries@mncfn.ca
Mississaugas of Scugog Island First Nation			General Email		consultation@scugogfirstnation.com
		Rob Lukacs	Consultation Advisor		rlukacs@scugogfirstnation.ca
		Samantha Shrubsole	Consultation Advisor		sshrubsole@scogogfirstnation.ca
Six Nations of the Grand River		Tanya Hill- Montour	Archaeology Supervisor		tanyahill-montour@sixnations.ca
Wendat Nation			General Contact		consultations@wendake.ca

The above represents the present community standings to the best of our knowledge and experience and is not meant to be an exhaustive list. TMHC makes no other representations, guarantees, or warranties whatsoever, whether express or implied, with respect to the information contained within Appendix B.



8 APPENDIX C: HUMAN REMAINS INVESTIGATIONS

Upon being notified of a human remains discovery and reviewing reports by the Police and/or Coroner, the Registrar may issue an order to undertake further investigation of the discovery site in order to collect information for the purposes of issuing a burial site declaration. The investigation must be carried out by a licensed archaeologist, following the general terms of the 2011 *Standards and Guidelines for Consultant Archaeologists*, and should be designed to collect sufficient information to provide to the Registrar in writing:

- A determination of the probable cultural origin or religious affiliation of the persons whose remains are interred and the basis upon which it is made;
- A description of the boundaries of the burial site;
- Details of the style and manner in which the human remains are interred;
- A description of any artifacts that, in the opinion of the investigating archaeologist, form part of the burial site;
- An opinion as to whether the burial site was set aside with the apparent intention of interring human remains in accordance with cultural affinities and the basis upon which the opinion is made; and
- Information relevant to the preparation of a site disposition agreement.

Within five days after the beginning of the investigation, the investigating archaeologist must advise the Registrar of the possible cultural origins of the human remains. Upon being advised of the possible cultural origins of the human remains, the Registrar shall advise those persons who the Registrar has reasons to believe may be representatives of the person whose remains are interred of the existence of the burial site and the possible cultural origins of the human remains.

For Indigenous burial sites, Indigenous representatives may wish to have direct involvement in the development of the work plan for the FBCSA investigation and provide input regarding procedures used to recover, handle, document, and analyze the remains and any other material that is identified.

Upon completion of a burial investigation by a licensed archaeologist, a report of findings will be prepared and submitted to the Registrar for consideration during the preparation of a declaration.

The Registrar's declaration will assign the human remains find to one of the following categories (FBCSA 2002 Section 97):

- *Aboriginal peoples burial ground* –land set aside with the apparent intention of interring in it, in accordance with cultural affinities, human remains and containing remains identified as those of persons who were one of the aboriginal peoples of Canada;
- *Burial ground* –land set aside with the apparent intention of interring in it, in accordance with cultural affinities, human remains and containing remains identified as those of persons who were not one of the aboriginal peoples of Canada; or
- *Irregular burial site* – a burial site that was not set aside with the apparent intention of interring human remains in it.

Upon making a declaration, the Registrar will order the legal landowner to enter into a burial site disposition agreement with representatives of the deceased. The Registrar will make a determination as to who should



act as representatives of the deceased (appropriate First Nation or First Nations, family members, Church) and will also provide them with official notification.

A burial site disposition agreement must contain:

- A legal description of the location of the burial site in which the human remains are interred and, if applicable, a statement that the remains will be left where they are interred and the site established as a cemetery;
- The style and manner in which the human remains are to be disinterred and reinterred, if applicable;
- The time within which the disinterment and reinterment are to take place, if applicable;
- The provisions being made for the future maintenance of the cemetery in which the human remains are to be located;
- The allocation of the costs of carrying out the agreement; and
- All other matters that the parties to the agreement agree upon.



9 APPENDIX D: ANTICIPATED ARCHAEOLOGICAL RESOURCES

It is possible that archaeological resources may be inadvertently discovered during trail construction or maintenance or by member of the public making use of the ORMT. These resources would require an initial stop work and evaluation by a licensed archaeologist.

9.1 Indigenous Artifacts

Finds representing Indigenous artifacts could include:

- Stone tools (e.g., projectile points, scrapers, drills);
 - Deliberated shaped chert objects use for specific uses/functions. They often have sharp edges
- Manufacturing discards (e.g., chert flakes);
 - The waste material generated during the manufacture of lithic tools. They are generally small, have sharp edges and have semi circular marks on one side.
- Ground Stone
 - Tools made from hard grained rock such as granite, basalt, schist, slate.
- Pottery and ceramic pipe sherds;
 - Clay artifacts that were shaped into pots, bowl or pipes then fired to make them waterproof and more durable. They are often decorated with lines.
- Bone and antler tools; and
 - Tools made from bone. They often made from antler or leg bones.
- Animal bone;
 - Fragments of animal bone, horn and tooth that are generally food remains. They are often very fragmentary and can be white-grey in colour due to burning.



Image 1: Indigenous Stone Tools – Projectile Points

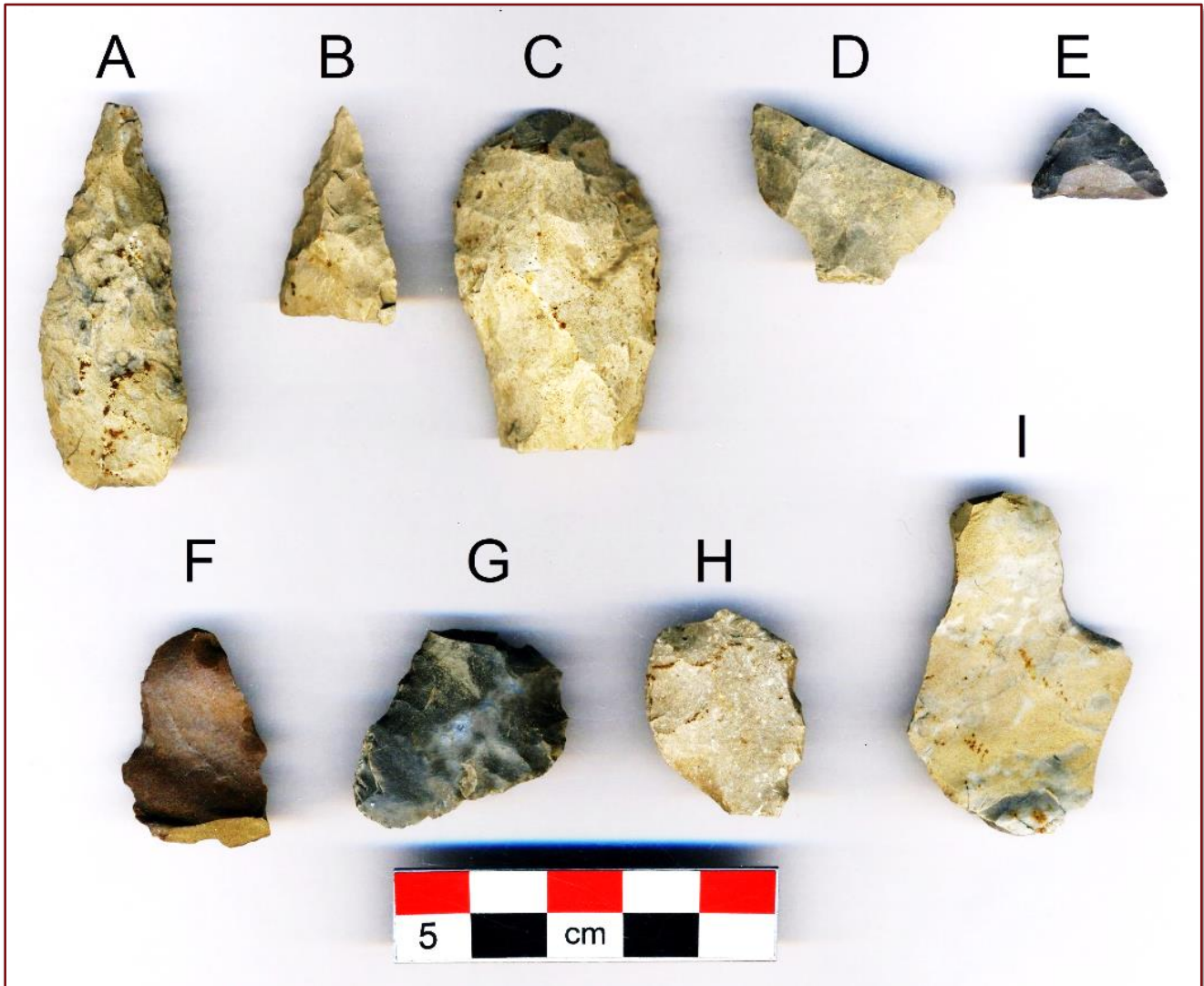


Image 2: Indigenous Stone Tools – Drills, Scraper, Biface



Image 3: Indigenous Chert Flakes



Image 4: Ground Stone Axe

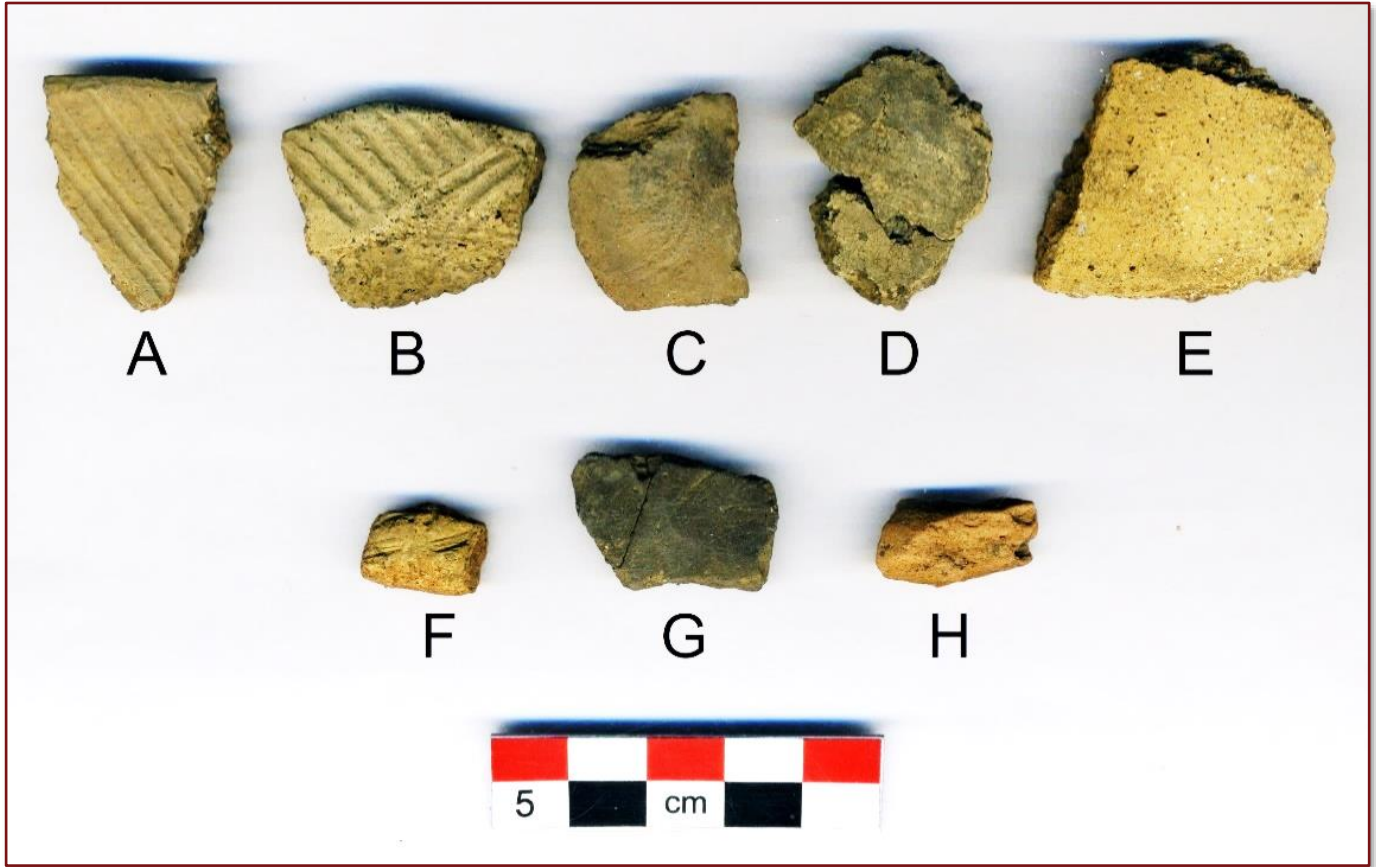


Image 5: Sherds of Indigenous Pottery



Image 6: Animal Bones



Image 7: Indigenous Bone and Antler Tools

9.2 19th-Century Artifacts

Finds representing 19th-century artifacts could include:

- Ceramic dishes (plates, bowls, jars, jugs)
 - Ceramics look like modern day plates, bowls and mugs. They are often white with colourful decoration on them. They can also be thicker and red, yellow or grey in colour and used for food storage.
- Glass (bottles, windows, lamps)
 - Glass was primarily used for bottles and jars for storing liquid i.e. alcohol, drinks, medicine, food.
- Personal Items (pipes, toys, buttons, etc.)
 - Artifacts that were used for daily life, hygiene, to reflect social status.
- Metal Items (nails, hardware etc.)
 - Metal objects such as nails, horseshoes, hardware, tools and horse tack.



Image 8: 19th-Century Ceramics



Image 9: 19th-Century Ceramics



Image 10: Glass Bottles



Image 11: Glass Artifacts



Image 12: Personal Artifacts



Image 13: Metal Artifacts

9.3 Cultural Features

9.3.1 Indigenous

Various types of cultural features are associated with Indigenous archaeological sites, including:

- Pit features;
- Sweat lodges;
- Hearths (i.e., fire-reddened soil) and ash deposits;
- Post moulds in rows and clusters representing house structures, palisades and other above ground installations; and
- Ancestor burials (not pictured).



Image 14: Cluster of Pit Features and Post Moulds from an Indigenous Late Woodland Period Site



Image 15: Indigenous Sweat Lodge from a Late Woodland Period Site



Image 16: Ash Pit and Hearth (Fired Soil) from a Late Woodland Period Site



Image 17: Post Moulds and Cultural Features Within an Indigenous House Structure



Image 18: Sample Ash Pit



Image 19: Sample Storage/Refuse Pit

9.3.2 19th-Century Features



Image 20: 19th-Century Stone Foundation



Image 21: 19th-Century Brick Foundation



Image 22: 19th-Century Cistern (wood rotted away)



Image 23: 19th-Century Well



Image 24: 19th-Century Cellar

APPENDIX C

SAMPLE CONSERVATION EASEMENT AGREEMENT FOR TRAILS



***SAMPLE* CONSERVATION EASEMENT AGREEMENT**

****REQUIRES LEGAL REVIEW BEFORE USING, AND FOR EACH INDIVIDUAL USE****

DATED this _____ day of _____, 20_____.

B E T W E E N:

LANDOWNER

(hereinafter called the “**Owner**”)

OF THE FIRST PART

- and -

<Add name of Qualified Recipient>

(hereinafter called the “**Trust**”)

OF THE SECOND PART

In consideration of the sum of TWO (\$2.00) DOLLARS now paid by the Trust to the Owner and in consideration of the covenants, easements, terms, conditions and restrictions contained herein, and pursuant to the Conservation Land Act of Ontario, R.S.O. 1990. C C.28, as amended, the Owner and the Trust hereby agree to the covenants, restrictions and easements as set out in this Agreement which shall run with the Lands for the term.

Article 1 - DEFINITIONS

1.1 For the purposes of this Agreement, the following words and phrases shall have the following meanings:

“**Act**” means the Conservation Land Act, RSO 1990, c. C. 28, as amended, and any statute that may be enacted to modify or replace this Act.

“**Agreement**” or “**this Agreement**” means this conservation easement agreement and the schedules attached.

“**Agriculture**” means the production, harvesting, storage, and incidental packaging, processing, wholesale and retail marketing of crops, plants, fibre, animals and related commodities produced on the Lands, including, without limitation, the raising, breeding, grazing and husbandry of livestock (such as cattle, sheep, goats, horses, poultry and fowl) and bees, dairying, equestrian operations, the planting, tending and harvesting of

forage, grain or other crops (such as beans, cereal grains, oil seeds, tobacco, vegetables, and fruits), horticulture, viticulture, nursery, forestry, biomass and pasturage.

“Authority” means any governmental authority, quasi-governmental authority, agency, body or department whether federal, provincial or municipal, having jurisdiction over the Lands or the use thereof.

“Conservation Body” means a conservation body as defined in the Act.

“Conservation Values” means the natural, ecological, scientific, wildlife, hydrological, scenic, or open-space values of the Lands that this Agreement is intended to protect. These values include, without limitation, biodiversity, native species and communities, wildlife habitat, water quality and quantity, soil stability, natural landforms, ecological functions, and any other attributes that contribute to the long-term conservation purpose of the Lands., which are more specifically set out in the full Baseline Documentation Report.

“Covenants and Restrictions” means the covenants and restrictions referred to in Article 4 and as set out in Schedule “B” attached to and forming part of this Agreement.

“Easement” means the easement set out in Article 5 forming part of this Agreement.

“Ecological Integrity” means the condition of the Lands in which the structure, composition, and function of native ecosystems are unimpaired and continue to support natural ecological processes. This includes, without limitation, the presence and persistence of native species and communities, natural hydrological and nutrient cycles, soil stability, wildlife habitat, and the ecological relationships and processes that sustain biodiversity and ecosystem health.

“Invasive Species” means any non-native, exotic, or introduced plant, animal, or other organism that threatens native species, natural vegetation communities, ecological integrity, or the Conservation Values of the Lands. This includes species listed or designated as invasive, noxious, or harmful under applicable federal, provincial, or municipal legislation, including Ontario’s *Invasive Species Act*, associated regulations, and recognized invasive species lists or guidance documents.

“Lands” or “Property” means the whole or part of the lands and premises of the Owner situated in the Province of Ontario legally described in Schedule “A” attached to and forming part of this Agreement, and includes any buildings, structures and improvements now existing or constructed during the Term.

“Minister” means the Minister of Natural Resources and Forestry for the Province of Ontario.

“Natural Features” means those natural features of or on the Lands and described under the heading General Description of Natural Features in Schedule “C” hereto.

“Oak Ridges Moraine Land Trust” means the above-named party of the Second Part, being a non-share capital corporation established by the laws of Canada.

“Owner” means the above-named party of the First Part and any person who at any time after registration of this Agreement becomes the registered owner of the Lands or any part thereof or any ownership interest therein, including being a trustee for any beneficial owner of the Lands.

“Natural Area” is the combined total area of that part of the Lands identified as the Natural Areas that are identified in the full and/or supplemental Baseline Data Reports.

“Natural Features” means all physical, biological, and ecological elements of the Lands that contribute to its natural character, ecological integrity, or conservation value. This includes, without limitation: native vegetation communities; individual native trees, shrubs, and herbaceous plants; wildlife and wildlife habitat; wetlands, watercourses, ponds, and riparian areas; soils, geological formations, slopes, and landforms; groundwater recharge and discharge areas; natural drainage patterns; and any other natural or semi-natural feature, process, or system that supports the ecological functions, biodiversity, or environmental health of the Lands.

“Register” means to register the interest, notice or instrument, as the case may be, using Ontario’s Land Registration System.

“Report” means the full or any supplemental Baseline Documentation Report describing the Lands and documenting the values, including for greater certainty the Conservation Values, and features and current uses of the Lands.

“Residential Area” is that part of the Lands described as Part [REDACTED] of [REDACTED] Reference Plan and identified on Map C in the full Baseline Documentation Reports of this Agreement.

“Term” means the term of this Agreement, being from and including the date of this Agreement and lasting in perpetuity, or the date the Covenants and Easement cease to have effect in accordance with this Agreement. If a defined, time-limited, term is deemed by the Courts a precondition of a restrictive covenant or easement and is required at law, then the Parties hereto agree that the term of this Agreement is 999 years.

Article 2 - REPRESENTATIONS AND WARRANTIES

2.1 The Owner covenants and warrants that the Owner is the legal, beneficial and registered owner of the Lands with good title thereto subject only to the encumbrances listed in Schedule "A".

2.2 The Lands include the significant Natural Features and Conservation Values summarized in the full and any supplemental Baseline Documentation Reports that the Owner and the Trust have agreed to protect and enhance as provided herein and that will be comprehensively documented in the Report.

2.3 The parties represent and warrant to each other that the Report accurately describe the Lands, including the current use and the significant Conservation Values of the Lands, at the time this agreement was entered, and that the Report is intended to serve as an objective information base for monitoring compliance with this Agreement.

2.4 The Owner covenants and warrants that spousal consent is not necessary to this Agreement under the provisions of the Family Law Act, R.S.O. 1990 c.F.3, unless the Owner's spouse has executed this Agreement.

2.5 The Trust covenants and warrants that it is a corporation incorporated under Part II of the Canada Corporations Act, and is continued under the Canada Not-for-Profit Corporations Act and that it is a charity registered under the Income Tax Act R.S.C, 1985, c.1 (5th Supp.) ("Income Tax Act of Canada"), that it is a conservation body within the meaning of the Act and has the right to enter into this Agreement.

Article 3 - INTENTION

****NOTE: THE INTENTION SECTION IS THE MOST IMPORTANT PART. Needs to be specified for each CEA based on the donor's wishes. Include as much detail as possible on their intention for the donation, the future use etc. of the lands.**

3.3 The purpose and intent of this Agreement is to ensure the conservation, maintenance, restoration and enhancement of the natural features of the Property and the wildlife on the Property which is located on the Oak Ridges Moraine, a highly significant geographical, hydrological and ecological feature, with particular emphasis on those natural features and wildlife set out in the full Baseline Data Report and to prevent any use of the Property that would interfere with, damage or destroy those natural features and wildlife or prevent the conservation, maintenance, restoration or enhancement of those natural features and wildlife, all is more particularly set out in this Agreement.

3.4 There is public interest and benefit in the conservation, maintenance, restoration and enhancement of the natural values and features of the Property and the wildlife thereon.

3.5 This Agreement is to be construed, interpreted, performed and applied so as to give effect to the purpose and intent of this Agreement and to enforce the Restrictions and Easement.

3.6 It is the intention of the parties that, subject to Sections 3.1, 3.2 and 3.3, and so long as there is no adverse impact on the purposes and intent as set out in those sections:

- (a) the use by the public of the Trail as a walking trail forming part of the Oak Ridges Trail system will be permitted.

3.7 The Owner acknowledges the Trust may assign this Agreement to a conservation body as the term is defined in the Act subject to obtaining any consent as required pursuant to Sections 4.3 and 4.4.

3.8 The Trust may, with the prior consent of the Owner and subject to any approvals and consents being obtained as required by Section 4.3 and 4.4, change the location of the Trail route on the Lands from time to time to best secure the optimum route of the Oak Ridges Trail. When the location of the Trail route has been changed in accordance with Sections 4.3 and 4.4, the Owner and the Trust shall mutually confirm in writing the new location of the Trail route. Any reference in this Agreement to the Trail includes the Trail as relocated from time to time.

3.9 The parties acknowledge for the purpose of registering this Agreement against the title to the Lands, the Trust may at its cost survey the Lands and the Trail and the parties shall co-operate to facilitate same and the registration of any plans as required to properly record and describe the terms hereof and the location of the Lands and Trail or any relocations of the Trail. All costs of surveying and registering shall be paid by the Trust.

The purpose and intent of this Agreement is to conserve the Conservation Values of the Lands in order to protect the important hydrological and ecological features and function and maintain the continuity and quality of the natural vegetation and wildlife habitat of the Property will be preserved in perpetuity. To achieve this purpose, the Owner agrees that the Natural Features will be retained, maintained and conserved by the Owner through the application of recognized natural heritage conservation principles and practices, as outlined in Section 4.2 of Schedule B, and that no change shall be made to the Lands that will adversely affect the Natural Features of the Lands as set out in the Ecological Sensitivity Report (DATE) and the full Baseline Documentation Report.

3.10 More specifically this Agreement is intended to ensure:

- (i) the conservation, maintenance, restoration and enhancement of the Natural Features of the Natural Area;

- (ii) the continuation of wildlife on the Natural Area; and
- (iii) any use of the Lands will not interfere with or prevent the conservation, maintenance, restoration or enhancement of, or damage or destroy the Natural Area, and wildlife habitat on the Natural Area, all as more particularly set out in this Agreement.

3.11 There is public interest and benefit in the conservation, maintenance, restoration and enhancement of the natural values and natural features of the Lands and the wildlife thereon.

3.12 This Agreement is to be construed, interpreted, performed and applied so as to give effect to the purpose and intent of this Agreement and to enforce the Covenants and Restrictions and Easement.

3.13 The Owner acknowledges the Trust may, after consultation with the original Owner, assign this Agreement to a conservation body as the term is defined in the Act subject to obtaining any consent as required pursuant to Sections 4.3 and 4.4. The Trust shall assign this Agreement to another Conservation Body in any situation where the Trust is at direct risk of losing its status as a Conservation Body under the Act, the Trust shall assign this Agreement to another qualified charity. Should the Minister of Natural Resources or the Minister's successor become the assignee of this Agreement and seek to further assign this Agreement, it is the intention of the parties that another Conservation Body be the preferred assignee. The Assignee shall be required, upon any assignment of this agreement to it, to assume all the rights and obligations of the Trust herein, and to enforce the terms hereof, to the same extent as the Trust may enforce the terms hereof.

3.14 The parties acknowledge for the purpose of registering this Agreement against the title to the Lands, the Trust may at its cost survey the Lands and the parties shall co-operate to facilitate the same and the registration of any plans as required to properly record and describe the terms hereof and the location of the Lands. All costs of registering and surveying shall be paid by the Trust.

Article 4 - COVENANTS AND RESTRICTIONS

4.0 Rights Reserved by Owner. The Owner reserves to his/her/it self, and to its successors and assigns, and any transferee therefrom, all rights accruing from its ownership of the Lands, including the right to engage in, or permit or invite others to engage in, all uses of the Lands that are not expressly prohibited herein and are not inconsistent with the purpose and terms of this Agreement.

4.1 The parties covenant and agree that the Covenants and Restrictions and Easement shall be deemed to be covenants and easements governed by and having

the benefit of the Act, that from the execution of this Agreement the burden of such Covenants and Restrictions and Easement shall run with and bind the Residential Area and Natural Area as set out herein and every part thereof and the benefit thereof shall inure to the Trust, and this Agreement shall be in full force and effect and in particular whether or not the Report has been completed or any acknowledgement signed by the parties in regard thereto.

4.2 The Owner covenants that the Owner and any licensee or lessee of the Lands and anyone for whom the Owner is in law responsible or for whom the Owner holds the Lands will observe and perform the Covenants and Restrictions as described in Schedule "B". In addition, the Owner will not knowingly permit any breach of the Covenants and Restrictions as described in Schedule "B" by any person whatsoever, and, if the Owner learns of any breach or the likelihood of a breach occurring, the Owner will notify the Trust of such breach or anticipated breach as soon as possible and, in addition, where reasonable in the circumstances, will take such steps as are reasonably necessary and legally available to the Owner to prevent the breach from occurring or continuing.

4.3 Where the covenants and agreements in this Agreement are in furtherance of an ecological gift under the *Income Tax Act* of Canada, no disposition, change in use, waiver, release or variance of Covenants and Restrictions as described in Schedule "B" or other terms of this Agreement may be affected.

4.4 No amendment or release of the Easements, Covenants and Restrictions of this Agreement may be effected without the consent of the Minister of Natural Resources and Forestry for Ontario and, if this Agreement is in furtherance of an Ecological Gift under the *Income Tax Act* of Canada, the authorization of the Minister of the Environment and Climate Change for Canada or any replacement entity responsible for enforcing the provisions relating to Ecological Gifts.

4.5 Any notice or request for authorization or consent referred to in Section 4.3 shall be delivered to the Trust in accordance with the provisions of Section 8.1.

4.6 No amendment, waiver or release of the Covenants and Restrictions shall be made, given or entered into except with the consent of or notice to the Minister of Natural Resources and Forestry, if required, from time to time and this Agreement is subject to all applicable laws and regulations in effect from time to time.

4.7 ****ADD FOR CEA's WITH TRAILS****: The Owner expressly reserves the right to, with the prior written approval of the Trust, and subject always to compliance with the Restrictions:

- (a) erect or remove or allow the erection or removal of fencing as may be required to separate the Trail from the remainder of the Property;

(b) place or allow the placement of field stones at the edge of fields provided that such activity (i) does not negatively impact upon the natural character of the Lands and (ii) does not present a safety hazard to users of the Trail; and

(c) erect no trespassing signs provided any no trespassing sign specifically permits the public use of the Trail.

In the event that the Owner proposes to erect fencing or permit the erection of fencing and the proposed fencing would block or substantially interfere with the route of the Trail, the Owner shall work in co-operation with the Trust to design and construct stiles or to identify and mark a mutually acceptable alternate Trail route on the Lands around the fenced area for the use of Trail users and obtain all approvals and consents as provided herein prior to erecting such fencing.

Article 5 - EASEMENT

5.1 The Grantor hereby grants to the Trust, pursuant to the authority of the Act, an easement and right of entry over the Property:

(i) for access to the Protected Area for the purposes of conservation, maintenance, restoration or enhancement of all or any portion of the Natural Area and the wildlife on the Protected Area;

(ii) for the purpose of determining through inspection, monitoring, testing or otherwise whether in its opinion the Restrictions and the obligations of the Owner hereunder are being complied with and the purpose of this Agreement is being achieved;

(iii) to carry out any remediation, restoration, removal or rehabilitation of the natural features of the Protected Area, and with respect to Section 2.1 of Schedule D on the Residential Area, as in the opinion of the Trust, acting reasonably, are necessary or desirable to carry out the purpose and intent expressed in Article 3 of this Agreement and to carry out any work and cure any default contemplated by, or referred to herein. The Owner acknowledges that where improvements, buildings or structures have been erected in contravention of the Restrictions, the Trust will be entitled to enter the Property, other than the existing residence and other buildings currently on the Property, for the purpose of removing such improvements, buildings and structures.

Notwithstanding the foregoing, the Owner shall be entitled to maintain and replace, enlarge and improve existing buildings and construct new buildings in the Residential Area and nothing herein prevents continued use and enjoyment of the Residential Area, subject to compliance with all applicable laws, treaties, regulations, guidelines, and

policy statements and protocols of the local First Nations, municipality, the Province of Ontario and the federal government.

5.2 The parties covenant and agree that the burden of the Easement shall run with and bind the Lands and every part thereof, in accordance with the terms of this Agreement, from the registration of this Agreement, in perpetuity, so long as the Covenants and Restrictions are in effect and the benefit of the Easement shall inure to the Trust.

5.3 The exercise of the Easement shall be subject to the following:

(a) Entry to the Lands for inspection of the Natural Area and Natural Features, and not of buildings and residences, may be made by the directors, officers, employees, agents and contractors of the Trust with vehicles, provided that the Trust shall take reasonable measures to interfere as little as reasonably possible with the use and enjoyment of the Lands by the Owner, and subject to notice being given as provided in Section 5.3(b) or waived by Owner. The easement and right of entry over the Residential Area will not unreasonably interfere with the existing or new buildings and improvements thereon and the use and enjoyment of the Residential Area.

(b) The Trust shall give the Owner prior notice of at least forty-eight (48) hours of its intended entry to the Lands unless in the opinion of the Trust, acting reasonably, there is an emergency or other circumstance which precludes the giving of such notice.

(c) Nothing herein shall be considered to permit public entry onto the Lands without the express consent of the Owner, and entry by the public is prohibited except with the prior consent of the Owner which may be refused by Owner, in Owner's absolute discretion.

****SPECIFIC TO TRAIL. LEGAL REVIEW TO ENSURE IT ALIGNS WITH THE ENTIRETY OF THE DOCUMENT BEFORE FINALIZING**:**

5.4 Upon the request of the Trust, the Owner shall promptly provide the Trust with any written consent or authorization that the Trust may require in order for it to obtain permission, when necessary, from any Authority for carrying out any activity permitted by the Easement.

5.5 The Owner, notwithstanding section 5.3, hereby grants to the Trust for the benefit of the public the right and easement in the nature of a right of way for the public to walk the Trail during daylight hours in accordance with the rules of conduct specified in the Trail User's Code. Except as specifically provided in this paragraph 5.4 no right or easement in favour of the general public respecting the Lands or the Trail is granted

by this Agreement. The right of the public to walk the Trail includes the right to walk the Trail with snowshoes or skis. All other modes of Trail access by the public are prohibited including, without limitation, horse-back riding, bicycles, and motorized vehicles including snowmobiles and all-terrain vehicles. Further, the Trust may enter into a license with the Oak Ridges Trail Association and assign to the Oak Ridges Trail Association, or any similar organization, the right from time to time to manage, maintain and operate the Trail, subject to the other provisions of this Agreement, and for this purpose the Oak Ridges Trail Association or to any other organization to whom the right to manage has been assigned as provided herein, shall have all of the rights and privileges of the Trust and all of its obligations herein as same relate to the Trail.

5.6 The Owner hereby grants to the Trust, its employees, volunteers, contractors and agents together with their supplies, equipment, materials, machinery and vehicles the right and easement to enter on and have access to the Lands at reasonable times and subject to obtaining all necessary approvals and consents and referred to in Sections 4.3 and 4.4 the notice requirements specified below for the following purposes:

- (a) to construct, maintain, repair, alter, relocate and replace from time to time at its sole expense the Trail and ancillary or incidental Trail structures and improvements; and
- (b) for all purposes reasonably necessary or incidental to the exercise of the rights hereby created or related to any of the foregoing purposes.

5.7 For greater certainty, ancillary or incidental structures and improvements in Section 5.5 include commemorative or interpretative signs or plaques, trail markers, stiles, boardwalks, bridges, steps or similar structures but do not include any structures, buildings, overnight rest areas, camps, campsites, huts, tents, benches, wells or fireplaces.

5.8 In exercising any of the rights and easements set out in section 5.5 the Trust shall be responsible for all costs of associated with the construction, maintenance, repair, relocation and use of the Trail and:

- (a) shall not without the written consent of the Owner remove, destroy or cut or allow the removal, destruction or cutting of trees, shrubs, other vegetation or rocks on the Lands except as may be necessary for the establishment, construction, repair or maintenance of the Trail or the prevention or treatment of disease;
- (b) shall not without the written consent of the Owner alter, dismantle, demolish or remove any existing structures on the Lands;

(c) shall perform all work in a manner and maintain a condition of safety, so as to comply with all federal and provincial laws and municipal by-laws and all requirements of law in respect of said work; and

(d) shall comply with the standards set out in the Guide.

5.9 The Trust may mark the Trail to indicate it is part of the Oak Ridges Trail in the following manner:

(a) by signs indicating that the Trail is on private land and that hikers should follow the provisions of the Trail User's Code;

(b) by visible markings on trees or other landmarks of a size approximately five (5) centimetres by fifteen (15) centimetres and at a height of between one (1) and two (2) metres; and

© by additional signage and/or markings as may be reasonably requested by the Owner from time to time.

5.10 Prior to entry or access to the Lands for the purposes identified in section 5.5, the Trust shall provide notice to the Owner as follows, unless in the opinion of the Trust there is an emergency or other circumstance which does not make it feasible to give notice of the intent of the Trust to enter on the Lands:

(a) at least 10 days written notice. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the activity proposed.

Article 6 - OWNER'S OBLIGATIONS, INSURANCE AND INDEMNITY

6.1 The Trust hereby agrees to indemnify and hold harmless the Owner and those for whom it is in law responsible from and against any and all claims, demands, expenses, actions, causes of action, and for any and all liability for damages to the Lands and injury to persons (including death) howsoever caused, arising out of or in any way related to the exercise of the rights under the Easement by the Trust or by those for whom the Trust is responsible, except those claims arising from any intentional or negligent act or omission of the Owner or those for whom it is in law responsible or invitees of the Owner.

6.2 The Owner shall, at the expense of the Owner, continue to care for and operate the Lands as would a careful and prudent owner. In particular, and without limiting the generality of the foregoing, the Owner shall:

- a) maintain the Lands and keep the improvements thereon in a good and sound state of repair, and keep the Lands free of all encumbrances and liens; carry and maintain at all times adequate comprehensive general liability insurance with an inclusive limit of not less than three million dollars (\$3,000,000.00) per occurrence for property damage, bodily damage and personal injury, with the Trust being identified as an additional insured thereunder, and provide the Trust with evidence of such coverage not less than annually.
- b) pay as they become due municipal and provincial taxes, rates and fees charged or levied against the Lands, including any that may be charged or levied against the Trust by reason of this Agreement and the rights transferred hereunder, and all charges for utilities, public or otherwise, and provide the Trust with evidence of such payments on its reasonable request.

6.3 The Trust shall at all times carry and maintain adequate comprehensive general liability insurance coverage of an inclusive limit of not less than the amount that a prudent owner of lands used for the purposes of the Easement would carry for property damage, bodily injury and personal injury. The initial amount of such insurance shall be Three Million (\$3,000,000.00) Dollars. The Trust will provide the Landowner with evidence of such coverage not less than annually.

6.4 The Owner shall give prompt notice to the Conservation Body of any proposals or processes involving activities that could potentially affect the Lands or within five hundred (500) metres of the Lands, such as any development applications or Zoning By-law amendments of which the Owner becomes aware which may have any impact on the Lands in order to give the Trust the opportunity to participate in relevant processes. Except as required by law, the Owner shall not permit any access to the Lands under the Aggregate Resources Act, R.S.O. 1990, c. A.8, the Mining Act, R.S.O. 1990, c.M.14, either as amended or replaced, or any other legislation for the purposes of extracting aggregates, minerals, water or any other resources, without obtaining the prior written consent of the Trust.

6.5 The Owner shall give notice to the Trust of any change in the ownership of or any interest in the Lands and the Trust shall give notice to the Owner of any assignment of the interest of the Trust under Article 4 of this Agreement. Any such notice shall include the name and address of the new party and shall be given at least ten (10) days prior to the change of interest.

6.6 The Owner and any mortgagee shall not transfer or permit any transfer of any ownership interest in the Lands without requiring the transferee to acknowledge in writing (by acknowledgement addressed and delivered to the Trust) the priority of this Agreement and the interest of the Trust thereunder, and will not lease or licence the Lands or any part thereof without such lease or licence being made expressly subject to

this Agreement. The failure of the Owner or mortgagee to perform any act required by this agreement shall not impair the validity of this Agreement or limit its enforceability in any way.

6.7 In the event of a dispute between the Trust and the Owner as to the boundary of the Natural Area, the Owner shall pay the costs of a survey of the boundary and the filing of a Reference Plan detailing the location of the boundary.

6.8 ****Optional Item**** No less than ten (10) days after the transfer of the fee simple title to or a possessory interest in the whole or any part of the Lands, the Owner shall pay to the Trust one (1) percent of the sale price or make alternative arrangements for such payment, to the satisfaction of the Trust. A lease of less than 5 years total duration and all transfers by bequest, by right of survivorship, or for no nominal consideration up to fifty (50) dollars are exempt from this provision. Any failure to make such payment shall be a debt with interest at the rate of one half (1/2) percentage point above the prime rate of interest from time to time charged by the Bank of Canada and shall be a charge upon the whole Lands enforceable in the same manner as a mortgage and shall be recoverable by the Trust in a court of law.

Article 7 - DEFAULT

7.1 If the Trust determines that there has been a breach of or default in the obligations and covenants of the Owner under this Agreement, they may take any action available to it at law, in equity, by statute or under this Agreement provided that the Trust shall first give to the Owner written notice of the default which notice shall specify the nature of the non-compliance and the measures necessary to secure compliance with the terms of this Agreement. If notice of default is given, the Owner shall have sixty (60) days following receipt of the notice of default to complete the required measures and to rectify the non-compliance or default.

7.2 In the event that the Owner has failed to provide compliance within the sixty-day period allowed, the Trust shall be entitled to enter onto the Lands and to complete those works and measures necessary to provide compliance and to remedy the default at the expense of the Owner.

7.3 If the Trust in its sole discretion determines that circumstances require immediate action to prevent or mitigate damage to the Natural Features of the Lands or for the purpose of public safety, the Trust may pursue its remedies under this Article 7 of this Agreement without prior notice to the Owner and without waiting for the expiry of the sixty (60) day notice period as otherwise required under Section 7.1.

7.4 The parties recognize that damages based upon market value may not be adequate or effective to compensate for destruction of or restoration of the

Conservation Values of the Lands as they existed prior to default or breach of the Agreement. Accordingly, the parties agree that:

- (a) compensation to the Trust in the event of default or breach of the Agreement may be based upon market value, restoration or replacement costs whichever, in the opinion of the court, shall better compensate the Trust, and
- (b) in addition, and without limiting the scope of the other enforcement rights available to the Trust under this Agreement, the Trust may bring an action or an application for injunctive relief to prohibit or prevent default or the continuance of default under this Agreement.

7.5 All reasonable costs incurred by the Trust in enforcing the terms of this Agreement, including without limitation legal costs and expenses, and any costs of restoration required to remedy any violation of the terms of this Agreement by the Owner shall be paid by the Owner to the Trust. Until paid by the Owner to the Trust, such costs of remedy incurred by the Trust shall be a debt owed by the Owner to the Trust and shall be a charge upon the Lands enforceable in the same manner as a mortgage and recoverable by the Trust in a court of law.

Article 8 - NOTICE

8.1 Any notice to be given or required under this Agreement (which term in this Section includes any request or waiver) provided or given hereunder shall be sufficiently given by either party if in writing and delivered by hand, sent by facsimile or other means of electronic communication or mailed by prepaid registered post, if to the Trust as follows:

Address: Oak Ridges Moraine Land Trust
5595 17th Sideroad
Schomberg, Ontario
L0G 1T0
Attention: Chief Executive Officer

Telephone Number: 905-939-3333
Email: landtrust@oakridgesmoraine.org

and if to the Owner as follows:

Address:

Attention:

Telephone Number:

Email:

Any notice so delivered or any notice so forwarded by facsimile or other means of communication shall be deemed to have been given on the next business day following the day of delivery or forwarding and any notice so mailed shall be deemed to have been given on the fourth business day following the day of mailing. Either party may in any manner aforesaid give notice to the other party of any change in the address and thereafter the new address shall be the address of such party for the purpose of giving notice hereunder.

Article 9 - GENERAL PROVISIONS

9.1 Owner Not Liable. No person who is an Owner shall be liable to the Trust for any breach of or default in the obligations owed to the Trust under this Agreement committed after the registration of a transfer by such person of that person's interest in the Lands, provided that the Owner has delivered to the Trust an acknowledgement and assumption executed by the new registered Owner in the form attached as Schedule "D", acknowledging the priority of this Agreement and the interest of the Trust or the assignee, as the case may be, and assuming the obligations of an Owner under this Agreement.

9.2 Assignment. Subject to receipt of any consent, approval or authorization required by Section 4.4 hereof, the Trust may assign all of its interest in this Agreement, the Covenants and Restrictions and the Easement to any qualified Conservation Body as defined by the Act. The Trust shall not be liable to the Owner for any breach or default in the obligations owed to the Owner under this Agreement committed after notice of the assignment of this Agreement has been given to the Owner. It is a condition of any such assignment that the Trust shall have obtained from any assignee an acknowledgement or covenant of such assignee in favour of the Owner and with the assignee to assume and to be bound by all of the Trust's covenants and obligations herein contained, including, without limitation, the indemnity in favour of Owner as set out in Section 6.1 and evidence of insurance to the extent required by and in compliance with Section 6.2, provided if the assignee is the Crown in right of Canada or Ontario or any agency, board or commission of the Crown in right of Canada or Ontario the insurance referred to in Section 6.2 shall not be required.

9.3 Registration. The Trust shall register this Agreement, or any portions or notice thereof, and in particular, shall register as separate instruments the Easement and Covenants and Restrictions herein, or otherwise in such form and manner as may be

permitted by the applicable laws and requirements of the appropriate Land Registry Office, and the Owner shall assist the Trust in all such registrations by executing any and all documents, and may do so in counterparts, as reasonably required to effect such registrations. In addition, the Agreement must be registered as a notice pursuant to Section 71 of the Land Titles Act.

9.4 Failure to Exercise or Enforce Rights. No failure, delay, or omission by the Trust in the exercise or enforcement of any right, power, or remedy under this Agreement shall be deemed to constitute a waiver of such right, power, or remedy, nor shall any single or partial exercise thereof preclude any further exercise. The Trust's rights and remedies are continuing, cumulative, and may be exercised at any time.

Any failure by the Trust to monitor, inspect, or identify a violation, whether for a short or extended period, shall not limit, impair, or be construed as a waiver of the Trust's right to enforce any provision of this Agreement. No inaction, delay, or oversight by the Trust shall be interpreted as consent to, acquiescence in, or approval of any violation.

Any violation of this Agreement shall be deemed to be a continuing violation until fully remedied to the satisfaction of the Trust, and the Trust may take enforcement action at any time, regardless of when the violation first occurred or was first discovered.

9.5 Acts Beyond Party's Control. Neither the Owner nor the Trust shall be liable to the other for any damage to or change in the Lands resulting from causes beyond the control of such party, including, without limitation, accidental fire, flood, storm, earth movement, subsidence, insect infestation or disease. The burden of proving that a particular breach of default was due to a cause beyond the control of the party shall be upon the party claiming immunity from such liability.

9.6 Third Party Trespass. The Owner shall not be held in breach of this Agreement solely due to the actions of third parties who trespass upon the Lands without the Owner's permission, provided that the Owner has exercised due diligence in discouraging, preventing, and responding to such trespass. This exception applies only to unavoidable third-party actions, and the Owner shall take reasonable steps to notify the Trust of any such incidents and to mitigate or prevent further unauthorized entry or activity."

9.7 Time of the Essence. Time shall be of the essence of this Agreement and shall be deemed to remain so notwithstanding any extension of any time limit.

9.8 Severability. All provisions of this Agreement, including each of the Covenants may be severable, and should any be declared invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected thereby.

9.9 Costs. Save as provided herein or ordered by any court or tribunal, each party shall be responsible for its own legal fees and related expenses arising from the negotiation and implementation of this Agreement.

9.10 Joint and Several. Whenever the Owner comprises more than one person, the Owner's obligations in this Agreement shall be joint and several.

9.11 Inurement. This Agreement including the Easement and Covenants, shall run with the Lands in perpetuity, or until such time as the Trust, or its successor or assign, authorizes their release in accordance with this Agreement and the Act and shall enure to the benefit of and be binding upon the parties hereto and their respective successors, assigns, heirs, executors and personal representatives, as the case may be.

9.12 Notice of Easement. After consultation with the Owner, the Trust may erect signage on the Lands setting out the existence of this Agreement and may otherwise publicize and communicate with others, including all governmental agencies, regarding the existence of this Agreement.

9.13 Interest. Any amount paid by a party hereunder by reason of the default of the other party shall bear interest from the date the amount was paid until the date of repayment at a rate which is the lesser of (i) one half (1/2) percent over the prime rate of interest from time to time charged by the Bank of Canada or (ii) the maximum rate allowed by law.

9.14 Entire Agreement. This Agreement is the entire agreement between the parties with respect to the matters dealt with herein, and no understandings or agreements, verbal, collateral or otherwise, exist between the parties except as herein expressly set out.

9.15 Headings. The headings in the body of this Agreement form no part of the Agreement but shall be deemed to be inserted for convenience of reference only.

9.16 Interpretation. This Agreement shall be read with such changes of gender and number as the context requires. Any reference to a person shall be deemed to include a corporation, partnership or trust.

9.17 Laws. This Agreement shall be construed and enforced in accordance with the laws of Ontario, and the applicable laws of First Nations, Ontario and Canada shall govern the rights of the parties thereto.

9.18 Assurances. Each party at the request of the other party shall execute and deliver such assurances and do such other acts as may be reasonably required or desirable to give full effect to the provisions and intent of this Agreement.

9.19 Acknowledgements. The Parties hereby acknowledge and agree that:

a. The Owner has been advised by the Trust to obtain independent legal, financial and tax advice prior to entering into this Agreement and has obtained that advice.

b. Pursuant to the Act, releasing or amending the Easement or Covenants contained in this Agreement requires the consent of the Minister of Natural Resources and Forestry for Ontario.

c. Pursuant to section 207.31 of the Income Tax Act, (Canada), the authorization of the Minister of the Environment and Climate Change for Canada or his/her delegate, is required prior to implementing a disposition of this Agreement or a change of use of the Property not in compliance with this Agreement.

9.20 Registry. This Agreement, or notice of this Agreement, in addition to being registered on title to the Lands, may in future be required to be deposited, filed or registered in a registry of Conservation Agreements under the Act managed by the Ministry of Natural Resources and Forestry for Ontario or its delegate (“the Conservation Agreement registry”). The Parties undertake and agree to execute any document required to affect the deposit, filing or registration of this Agreement in the Conservation Agreement registry when the Conservation Agreement registry is established.

9.21 Extinguishment. “If all or part of the Lands is taken by expropriation, or if a subsequent unexpected change in the conditions surrounding the Lands makes impossible the continued use of the Lands or any portion thereof for conservation purposes, the restrictions contained in this Agreement may only be extinguished, in whole or in part, by judicial proceeding in a court of competent jurisdiction, and in compliance with all applicable requirements of the Conservation Land Act (Ontario). Where applicable, authorization from Environment and Climate Change Canada under the Ecological Gifts Program shall also be required prior to any extinguishment.

9.21 Funds for Purposes. The Trust must use any funds received on account of the release, termination, or extinguishment of the Conservation Easement in whole or in part in furtherance of its charitable conservation purposes.

9.22 Perpetuity. This Agreement, including all of the Easement and the Covenants and Restrictions, shall run with the Lands in perpetuity, or until such time as the Trust, or its successor or assign, or a court of competent jurisdiction authorizes a release, as well as an authorization by Environment and Climate Change Canada under the Ecological Gift Program, which shall enure to the benefit of and be binding upon the parties hereto and their respective successors, assigns, heirs, executors and personal representatives as the case may be.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

PER: <QUALIFIED RECIPIENT NAME>

Name:

Title:

Witness Name:

Witness Signature:

PER: <QUALIFIED RECIPIENT NAME>

Name:

Title:

Witness Name:

Witness Signature:

**I/We have the authority to bind the Corporation*

Per: **<DONOR #1 NAME>**

Name:

Title:

Witness Name:

Witness Signature:

**I/We have the authority to bind the Corporation*

Per: **<DONOR #2 NAME>**

Name:

Title:

Witness Name:

Witness Signature:

**I/We have the authority to bind the Corporation*

SCHEDULE "A"

Legal Description of the Lands

Attached to and forming part of the Conservation Agreement between the Owner and the Oak Ridges Moraine Land Trust, dated as of the _____ day of _____, _____.

Legal Description:

Property

Legal description:

PIN Number:

SCHEDULE "B" COVENANTS AND RESTRICTIONS

Owner covenants and agrees pursuant to the *Conservation Land Act* with Trust that the following Covenants and Restrictions shall apply to the Lands in accordance with their terms in perpetuity.

1.0 Definitions and Interpretation

1.1 **In these Covenants and Restrictions:**

"Protected Area" means that part of the Lands as shown on in the full Baseline Data Report, or as may be revised in accordance with the provisions of this Schedule "B"

"Natural Area" means that part of the Lands as shown in the full Baseline Data Report", or as may be revised in accordance with the provisions of this Schedule "B".

"Residential Area" means that part of the Lands as shown in the full Baseline Data Report", or as may be revised in accordance with the provisions of this Schedule "B".

***ADD ADDITIONAL AREAS AS APPROPRIATE – I.e. Farmstead, agricultural**

Other capitalized terms used in these Covenants and Restrictions that are defined elsewhere in the Agreement of which this Schedule "B" is a part shall have the respective meanings ascribed to them in the Agreement.

Wherever the term "Lands" or "Property" is used in these Covenants and Restrictions, such term shall be construed to apply to any and all parts of the Lands and to any water thereon.

2.0 COVENANTS AND RESTRICTIONS APPLICABLE TO ALL PARTS OF THE LAND

2.1 Water Quality/Quantity

No activity or use of the lands shall be undertaken, permitted, or suffered to be undertaken that, in the opinion of the trust and any governmental or regulatory authority having jurisdiction, acting reasonably, is or may reasonably be expected to be detrimental or adverse to the conservation, protection, or maintenance of water quality or water quantity on, in, or about the lands, including groundwater and any ponds within the residential area. All activities affecting water resources must comply with all applicable federal, provincial, and municipal laws, regulations, and policies, including but not limited to those administered by conservation authorities or any other governing bodies.

Nothing in this covenant restricts the taking or use of water:

(a) for usual household, residential, purposes carried out within the residential area; or

(b) from any existing or future well, pipelines, accessories, or electric conduits, or replacements thereof, provided such taking is for use on the property and is conducted in accordance with all applicable regulations and legislation.

2.2 Severance/Subdivision

No part of the Lands will be severed, sold, conveyed, mortgaged, charged, leased or otherwise disposed of separately from the remainder of the Lands, and no plan of subdivision or condominium will be registered against title to the Lands, without the prior written consent of the Trust.

2.3 Lakes/Ponds/Wetlands

No interference with, or alteration of, any lake, pond, wetland, watercourse, or any other body of water on the lands shall be undertaken, permitted, or suffered to be undertaken, unless such activity complies with all applicable federal, provincial, and municipal laws, regulations, and policies, including but not limited to those administered by conservation authorities or any other governmental or regulatory body having jurisdiction. No use of such features shall be made or permitted to be made which, in the opinion of the trust and any other governing bodies or legislation, acting reasonably, will or may reasonably be expected to be detrimental or adverse to the purpose, intent, or terms of this agreement, or to the exercise, compliance with, or enforcement of the covenants, restrictions, or easement.

It is understood and agreed that the use of wells and surface water for domestic purposes, associated pipes, and periodic maintenance of existing ponds and shorelines may be carried out only in accordance with all applicable regulations and legislation. Any further alteration shall require the prior written consent of the trust.

3.0 COVENANTS AND RESTRICTIONS APPLICABLE TO THE NATURAL AREA

3.1 Topography and Surface Alteration

No alteration shall be made, permitted, or suffered to be made to the general topography or surface of the natural area that, in the opinion of the trust, acting reasonably, is or may reasonably be expected to be detrimental or adverse to the purposes and intent of this agreement. All activities affecting the topography, soils, or surface features of the natural area shall comply with all applicable federal, provincial, and municipal laws, regulations, and policies, including but not limited to those administered by conservation authorities or any other governmental or regulatory body having jurisdiction.

Without limiting the foregoing, any alteration of the surface or topography of the natural area—including, without limitation, the construction of retaining walls, dams, ponds, transmission or generating towers or lines, and any similar undertaking, as well as the dumping, excavation, dredging, grading, ditching, exploration or drilling for, mining, or removal of loam, gravel, soil, rock, sand, aggregates, oil, natural gas, other hydrocarbons, peat, water, or any other material or minerals—shall be deemed detrimental or adverse to such purposes and shall not be undertaken or permitted without the prior written consent of the trust. The owner shall be responsible for all costs incurred by the trust in connection with consent requests and the trust's approval process. Upon ten (10) days' prior written notice to the trust, and provided that all reasonable measures are taken to minimize and mitigate any adverse impacts, minor alterations of the surface or topography of the natural area may occur for archaeological purposes, or for the installation, construction, maintenance, or repair of drainage ditches, the capping or deepening of existing wells, the creation of new wells, or the creation or maintenance of septic systems required to service permitted uses on the lands, provided that such activities are carried out in accordance with all applicable legislation, regulations, and policies. The owner shall cover the trust's costs associated with consent requests and the trust's approval process.

3.2 Soil Stability

No use or activity shall occur, or be permitted or suffered to occur, on the Natural Area that results in, or is reasonably likely to result in, measurable soil degradation, accelerated erosion, compaction, sedimentation, the deposit of waste, fill, or toxic materials, or the depletion, pollution, or alteration of soils or surface or subsurface waters. For the purposes of this covenant, "measurable" includes any change that is

observable through field inspection, photographic comparison, erosion scoring, or other recognized assessment methods.

Without limiting the generality of the foregoing, prohibited impacts include but are not limited to:

- (a) creation of bare or unvegetated soil patches exceeding 10 m² unless required for a permitted use;
- (b) visible rilling, gullyng, bank undercutting, or slope instability;
- (c) introduction, storage, or disposal of any fill, waste, or foreign material;
- (d) activities that alter natural drainage patterns or increase runoff velocity or volume.

Exceptions;

(a) Natural Obstruction Mitigation Activities necessary to mitigate flooding or damage caused by beaver dams or other natural obstructions may occur, provided that:

- (i) they do not obstruct natural watercourses;
- (ii) they are limited to the minimum intervention required;
- (iii) they comply with all applicable legislation and regulatory guidance; and
- (iv) they do not cause measurable soil degradation beyond the immediate work area.

(b) **Non-hazardous Materials for Permitted Uses** Non-hazardous and non-toxic materials generated by activities permitted under this Agreement may be temporarily stored, managed, and removed in a manner that is timely, environmentally sound, and prevents soil or water contamination. Gravel, sand, or rock materials sourced from outside the Natural Area may be used solely for the repair or maintenance of permitted roads or buildings, provided such use does not result in measurable soil degradation or alteration of natural drainage.

3.3 **Camping and Temporary Housing**

No mobile home, trailer, tent, cabin, yurt, recreational vehicle, temporary shelter, or boat, whether used or intended for use as a residence, temporary housing, or for

overnight or short-term accommodation, shall be placed, kept, or permitted or suffered to be placed or kept on any part of the Natural Area.

3.4 Hunting, Trapping and Wildlife Management

No commercial or sport hunting or trapping shall occur or be permitted or suffered to occur in the Natural Area *other than those outlined under section 3.11. Wildlife, including predators, prey species, and other native fauna, shall not be intentionally harmed, killed, removed, or otherwise managed for the purpose of altering population levels or preventing natural ecological interactions.

In situations involving predation, crop damage, or other conflicts with wildlife, the Owner shall make all reasonable efforts to use non-lethal, preventative, and government-recommended management practices before considering any lethal action. Reference shall be made to the programs, guidance, and best-practice documents provided by the Ministry of Agriculture, Food and Rural Affairs, the Ministry of Natural Resources and Forestry, or any other relevant governing body, recognizing that some legislation may not fully address conservation-based approaches.

Lethal control measures shall only be undertaken where:

- (a) non-lethal options have been reasonably attempted or are demonstrably ineffective;
- (b) the action is necessary to address a specific, immediate, and justifiable threat to property, livestock, or human safety; and
- (c) the extent of the action is limited to what is reasonably required to address that specific issue.
- (d) Any necessary lethal wildlife control shall only be carried out by individuals who hold all licences required under the Fish and Wildlife Conservation Act, the Firearms Act, and any other applicable legislation, and shall not be performed by recreational hunters or unlicensed persons invited onto the Lands.

Under no circumstances shall wildlife be harmed or killed for the purpose of artificially increasing or decreasing populations of other species, protecting crops in a manner inconsistent with the conservation objectives of this Agreement, or for any purpose contrary to the intent of maintaining natural ecological processes on the Lands.

3.5 Vehicles

No snowmobile, all-terrain vehicle, motorcycle, or similar motor-driven land, water or air borne vehicle will be operated or permitted to be operated on or through the Lands outside of the Residential Area unless it is for the purpose of carrying out activities

required by a forestry management plan approved by the Trust, trail or property maintenance by the owners and those authorized by the owner in writing.

3.6 Collection

No native or naturally occurring plant or plant part or animal shall be gathered or removed from the Natural Area, save and except for the Owner's personal consumption or use, protection or restoration of native species on the Lands, and is conducted in a manner that is not detrimental to the viability of the existing plant population from where the collection is occurring, but this provision shall not prohibit removal in the course of exercise of the Trust's rights under the terms of the Easement, or as permitted under the current or a mutually agreeable Forest Management Plan, or limit the rights of the Owner hereof.

3.7 Easements and Right of Ways

No easement, right of way or right in the nature of an easement, in, on, over, under or through the Natural Area, which is inconsistent with these Covenants and Restrictions and the rights of the Trust hereunder shall be granted to any person, without the prior written consent of the Trust.

3.8 Non-native Species

No non-native plant or animal species shall be planted or introduced or be permitted or suffered to be planted or introduced in or to the Natural Area. Notwithstanding the foregoing, current and existing plants and animals and natural seeding or offspring arising therefrom as well as plantings and seeding arising from natural causes such as wind or rain or animal wildlife if not brought onto the Lands by Owner shall not be considered to be in contravention of the provisions hereof, and plantings and reforestation carried out by Owner pursuant to a reforestation plan approved by Owner and Trust and prepared by a Registered Professional Forester shall be permitted.

3.9 Roads/Trails/Driveways *ADAPTABLE

No road, driveway, walkway, bicycle or other path or trail, parking area, dock or ramp shall be erected, placed or maintained or be permitted or suffered to be used, erected, placed or maintained on, in, under or over the Natural Area, except for:

- (i) any currently existing or in use at the date of this Agreement, and as described in the full Baseline Documentation Report;
- (ii) closing and replacement of currently existing trail; or
- (iii) otherwise for use by Owner for walking, hiking, horseback riding, skiing, etc. with 10 days prior written consent of the Trust. Owner shall cover the

Trust's costs associated with consent requests for trails not included within these exceptions and the Trust's approval process.

3.10 **Pesticides/Toxic Materials**

No pesticide, insecticide, herbicide, chemical, bio-solids, or other toxic or hazardous material of any type or description shall be used, applied, stored, or permitted or suffered to be used within the Natural Area, except in full compliance with all applicable federal, provincial, and municipal laws, regulations, and regulatory guidance, including but not limited to Ontario's *Pesticides Act*, its regulations, and any applicable federal requirements under the *Pest Control Products Act*. An exception is permitted only to the extent reasonably required to control invasive species outbreaks, and only where:

- (i) The method, product, and application rate comply with all regulatory requirements;
- (ii) No non-chemical alternative is reasonably effective;
- (iii) The least-toxic and lowest-risk option is selected; and
- (iv) The activity does not cause measurable harm to soils, water, vegetation, wildlife, or ecological integrity.

3.11 **Removal of Trees and Vegetation**

No tree, shrub, or other native or natural vegetation shall be removed, destroyed, or cut within the natural area, except as follows:

- (i) Where removal forms part of a registered forest management plan that has been approved in writing by both the owner and the trust;
- (ii) Where removal is reasonably required to control, suppress, or eradicate non-native, invasive, or exotic species, including non-native trees that threaten native vegetation, ecological integrity, or forest regeneration. Such removal shall be carried out using methods that minimize disturbance to native species, soils, wildlife, and hydrological features, and shall prioritize ecological restoration of affected areas; or
- (iii) where dead, dying, or diseased trees pose a danger or hazard, as confirmed by a registered professional forester, certified arborist, or other qualified expert approved in writing by the trust, and where removal is conducted in a manner that is not injurious to remaining trees, flora, fauna, soils, or hydrological features, and maintains soil stability and the other conservation values of the lands.

3.12 **Hydro/Public Utilities**

No use of electrical power or any other form of public utility shall be permitted on or about the Natural Area, without prior written consent of the Trust, save and except for any existing hydro line or as needed for any permitted building on the Lands. Should the Owners consider some future form of renewable energy generation on this site, in such way as to avoid any adverse impacts on the ecological values of the property, the Land Trust would review the request with the Ecological Gifts program to determine acceptability, acting reasonably. Owner shall cover the Trust's costs associated with consent requests and the Trust's approval process.

3.13 Indigenous Harvesting ***ADAPTABLE. Optional but recommended**

The ceremonial and harvesting use of plants and animals by Indigenous People in a sustainable and safe manner that maintains the Conservation Values of the Property and the goals of this CEA as permitted as under Section 35 of the Constitution Act, 1982. Any such activity must be agreed to, in advance, by the Indigenous People, the Owner and as necessary, the Trust

OR

3.13 Indigenous Access and Rights/ or Recognition of Indigenous Rights

The landowner acknowledges that this Conservation Easement Agreement shall be interpreted and implemented in a manner consistent with Section 35 of the Constitution Act, 1982, which recognizes and affirms the existing Aboriginal and treaty rights of Indigenous Peoples.

(a) Indigenous individuals and communities who hold constitutionally protected Aboriginal or treaty rights in the area shall have access to the Easement Lands for the purposes of carrying out traditional practices, including but not limited to:

- (i) Hunting, fishing, and trapping in accordance with Indigenous laws and Canadian legal frameworks;
- (ii) Harvesting of plants, medicines, and other natural resources for cultural, spiritual, and sustenance purposes;
- (iii) Ceremonial and spiritual practices, including the establishment of temporary structures necessary for such activities.

(b) Access shall be exercised in a manner that is consistent with the conservation objectives of the Easement, provided that:

- (i) No unreasonable barriers shall be imposed on Indigenous access, except where restrictions are necessary for ecological protection, public safety, or compliance with existing conservation management plans, and

(ii) Any restrictions on access shall be developed through consultation with affected Indigenous communities.

(c) The landowner shall collaborate with Indigenous communities with rights and interests in the Easement Lands to develop stewardship practices that integrate Indigenous knowledge and governance systems with conservation objectives.

(d) The landowner commits to engaging in meaningful consultation with Indigenous representatives when considering any land management decisions that may impact Indigenous rights and access.

Nothing in this Agreement shall be interpreted to abrogate or derogate from the existing Aboriginal or treaty rights of Indigenous Peoples as recognized and affirmed under Section 35 of the Constitution Act, 1982.

3.14 **Wildlife Movement**

The Owner shall not construct, pursue, permit, or suffer the construction of fencing or other obstacles, which would exclude or in the opinion of the Trust, acting reasonably, unduly restrict wildlife movement in or through the Natural Area.

3.15 **Buildings/Development/Improvements**

No new building, structure, fixture, or other improvement of any kind shall be erected, placed or maintained or be permitted or suffered to be erected, placed or maintained, on, in, under or over the Natural Area, after the date of registration of these Covenants and Restrictions against the title to the Lands, subject to fences being placed or maintained, so long as same are otherwise in accordance with the provisions of the Agreement.

***NOTE: For clauses with references to “Without prior permission from the Trust”. It is important to have a procedure, and documentation of approval of such requests, and all correspondence. ***

4.0 **REVIEW COSTS**

Wherever the written consent of the Trust is required to evidence compliance with the Covenants and Restrictions, the Owner shall cover the Trust’s costs associated with consent requests and the Trust’s approval process including any costs reasonably incurred by the Trust in retaining outside professional assistance to review and implement the request.

SCHEDULE “C” SUMMARY BASELINE DOCUMENTATION REPORT

The Baseline Documentation Report (BDR) referenced herein is provided only as a summary. The Trust retains the full BDR and any supplemental materials, and the Owner may contact the Trust at any time to obtain copies or review the complete documentation.

Attached to and forming part of the Conservation Easement Agreement between Grantor and the Oak Ridges Moraine Land Trust, dated as of the _____ day of _____, 20__.

The Trust shall complete a Baseline Documentation Report at its expense no later than six (6) months from the date of this Agreement, or as soon thereafter as weather conditions reasonably permit. In the event that weather conditions prevent timely completion, the Trust shall prepare and provide interim documentation sufficient to establish the condition of the Lands as of the date of this Agreement, until such time as the full Report and any supplemental materials can be completed.”. When the Report has been completed, the Owner agrees to sign an acknowledgement in the Report to confirm the photographs, maps and written information are accurate depictions and descriptions of the Lands and its natural values and features, wildlife, agriculture and other uses. A signed copy of the Report will be provided to the Owner and an originally signed copy of the Report will be filed at the offices of the Trust ****and will be submitted to the Ecological Gift Program (*include only if it’s a donation through the Ecological Gift Program)**

Summary of Natural Features

Property Location:

General Description of Natural Features:

Significance of the Lands:

Description of Areas within the Lands:

List of Improvements:

Damaged or Disturbed Areas:

Site Plan or Map: See Schedule “C”, Map 1 in the full Baseline Data Report as well as **Schedule “C”**, Map 1 in the Conservation Easement Agreement.

Schedule “C” Map 1: Satellite photograph of the Lands at the time of securement.

Capitalized terms used in this **Schedule “B”** have the same meaning as in the Conservation Easement Agreement, unless otherwise indicated.

Schedule "C", Map 2: Map of the Areas as defined in the Conservation Easement Agreement, unless otherwise indicated.

Schedule "C", Map 3: Map of Buildings on the Property, anthropogenic features, and structures,

Schedule "C" Map 4: Map of Trail *For trail easements only

SCHEDULE "D" ACKNOWLEDGEMENT AND ASSUMPTION AGREEMENT

THIS AGREEMENT made this _____ day of _____
20_____.

BETWEEN:

[INSERT LEGAL NAME]

(hereinafter called the "**New Owner**")

OF THE FIRST PART

- and -

<QUALIFIED RECIPIENT NAME>

a corporation incorporated under the
Canada Not-for-Profit Corporations Act
(hereinafter called the "**Trust**")

OF THE SECOND PART

WHEREAS:

A. By agreement dated _____, 20____ and registered in the Land Registry Office for the Registry/Land Titles Division of _____ (No. __) on _____, 20____, as Instrument No. _____, a copy of which is attached hereto as Schedule "A" (the "**Agreement**"), [ORIGINAL OWNER] granted to the Trust the rights and easements respecting the use of the lands (the "**Lands**") described in the Agreement as set forth in the Agreement.

B. The New Owner is now the registered owner of the Lands.

C. The Agreement contains a provision (Section 9.3) stipulating that, on the sale or transfer of the Lands, an acknowledgement and assumption agreement executed by the new registered owner of the Lands acknowledging the priority of the Agreement and the interest of the Trust and assuming the obligations of the owner under the Agreement shall be delivered to the Trust.

IN CONSIDERATION OF the mutual covenants and agreements between the parties to this Agreement and the sum of One Dollar (\$1.00) that has been paid by each of the parties to each of the others, the receipt and sufficiency of which are acknowledged, the parties hereby agree as follows:

1. The New Owner acknowledges and agrees that:
 - (a) the Agreement shall rank first in priority to all other agreements, easements, encumbrances and liens affecting the Lands except those that have priority under any statute;
 - (b) the Trust continues to have and enjoy all the rights, easements and remedies granted to it in the Agreement; and
 - (c) the New Owner will, at all times observe and perform the terms, covenants and conditions contained in the Agreement respectively reserved and contained on the part of the Owner therein to be observed and performed.

2. The address for service of the New Owner, for purposes of service of any notice, request, waiver or other document pursuant to the provisions of **Section 8.1** of the Agreement, is as follows:

New Owner:

Address:

Telephone/Email:

3. The parties in all other respects hereby confirm that the Agreement is in full force and effect, unchanged and unmodified except in accordance with this Agreement. It is understood and agreed that unless defined to the contrary herein, all defined terms and expressions when used in this Acknowledgement and Assumption Agreement have the same meaning as they have in the Agreement.

4. This Agreement shall inure to the benefit of and be binding upon the Trust and the New Owner and each of their heirs, executors, administrators, personal representatives and permitted successors and assigns, respectively.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement by affixing their respective corporate seals under the hands of their proper signing officers duly authorized in that behalf.

If corporate owner:

[LEGAL NAME OF CORPORATION]

Date:

Per:

Name:

Title:

Date:

Per:

Name:

Title:

We have authority to bind the Corporation.

-OR-

If individual owner(s):

SIGNED, SEALED AND DELIVERED in the presence of:

Date:

Witness:

Please sign above and print name here

Name:

Please sign above and print name here

Spousal statement pursuant to the *Family Law Act* (Ontario): I, _____
am/am not a spouse. The person consenting below is my spouse.

SIGNED, SEALED AND DELIVERED in the presence of:

Date:

Witness:

Please sign above and print name here

Name:

Please sign above and print name here

<QUALIFIED RECIPIENT NAME>

Date: _____

Per: _____

Date: _____

Per: _____

We have authority to bind the Corporation.

SCHEDULE "D" - TRAIL USER'S CODE - *For trail easements only. Update as appropriate.

* HIKE ONLY ALONG MARKED ROUTES - DO NOT LEAVE THE TRAIL.

* USE STILES TO CLIMB FENCES. CLOSE GATES BEHIND YOU.

* CARRY OUT ALL GARBAGE.

* RESPECT THE PRIVACY OF RESIDENTS.

* WALK AROUND THE EDGE OF FIELDS, DO NOT CROSS THEM.

* CONTROL YOUR DOG ON A LEASH AT ALL TIMES.

* DO NOT DISTURB THE WILDLIFE OR FARM ANIMALS.

* LEAVE TREES, FLOWERS AND PLANTS AS YOU FOUND THEM FOR OTHERS TO ENJOY.

* NO OVERNIGHT CAMPING OR FIRES EXCEPT WHERE PERMITTED IN DESIGNATED AREAS.

* TAKE NOTHING BUT PHOTOGRAPHS AND LEAVE ONLY YOUR FOOTPRINTS

APPENDIX D

LAND SECUREMENT ENGAGEMENT SUMMARY REPORT



6



Ne'ikaanigaana Inc.

"Seeing Ourselves as a Reflection of Creation"

Georgina Island First Nation
RR#2 BoxA19 Sutton West ON
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Land Securement Engagement Summary Report

In supporting this initiative as outlined in the agreement Ne'ikaanigaana Inc assisted with the coordination and facilitation of gatherings with five (5) out of the seven (7) Williams Treaties First Nations Communities. This initiative was to assist in gathering information and feedback to help with creating a bridged (formerly "two-eyed seeing") approach to land securement along the Oak Ridges Moraine Trail as part of the renewed Strategy.

Through the Gatherings we presented information to the participants within the Williams Treaties Communities regarding options for land securement for the trail. Participants in attendance were given seven scenarios they were asked to review and rank using a dot matrix activity. The dot matrix activity allowed the participants to rank the scenarios from most favorable to least as well as giving them opportunity to identify options from each that they felt would be good to bring forward in the preferred land securement option that could be moved forward.

The following Communities were engaged between February 2026 and May 2026, Alderville First Nation, Beausoleil First Nation, Georgina Island First Nation, Hiawatha First Nation and Scugog Island First Nation. It must be taken into consideration that each Communities participation level was different and although presentations were given, there was not a lot of time given to some of the Communities to review and really consider the options, which was then afforded to others as our approach shifted based on each Communities turn out, venue and lessons learned from the previous engagements. The below summary should be considered as a first step in moving this initiative forward.

Below is a summary of the combined scenarios from all engagement sessions as well as questions and comments that have emerged from these engagement sessions:

Scenario One: Fee Simple Donation Through the Ecological Gifts Program.

Scenario Two: Fee Simple Donation of Trail Section Only – Non-Ecological Gift Program

Scenario Three: Fee Simple Purchase – Entire Parcel/Property

Scenario Four: Fee Simple Purchase of Trail Section Only



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Scenario Five: Conservation Easement – Agreement for Entire Property Through the Ecological Gift Program

Scenario Six: Purchase of a Trail Conservation Easement Agreement

Scenario Seven: Buy, Sever and Sell Parcel/Property (3 Step Process)

Scenario	Green	Yellow	Red
One	16	11	8
Two	16	11	8
Three	11	12	2
Four	11	12	3
Five	7	10	11
Six	13	11	7
Seven	10	9	13

Scenario One and Two ranked the highest in being the most favorable and Scenario Seven ranked the highest for being the most unfavorable.

Although there are two clear favorites as well as a clear unfavorable scenario, there was lots of dialogue regarding facets of some that were favorable as well as unfavorable that need to be explored more in depth. Below are the written questions and comments regarding scenarios. Other questions and comments were to be gathered by the ORMLT representatives as per the agreement.

Scenario One

- Not a fan of the terminology “gift”. Would ruffle feathers of other First Nation Communities and members. The concept of being offered “gifts: off our traditional territories.
- (Land back clause in app EGP’s) ❤️ #8 Archaeological review
- (co-stewardship, indigenous-led management, potential with Indigenous Land Trust)

Scenario Two

- (flexibility, and opportunities for Indigenous education and participation, though bummer about limited eco protection beyond trail)
- Minimal acquisition cost with immediate control of the trail corridor.
- Clear title simplifies stewardship, signage, public access, and liability management along the trail.



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- Faster, lower-complexity transaction than full-property deals or Ecological Gift filings.

Scenario Three

- would it be possible to split ownership between landowner and trust? E.g. 51% of ownership to trust and 49% of ownership to private owner? That way private owner can still use ownership stake for equity.
- (intentional relationship building though risky, future pathways for shared ownership, co-management, or land transfer)
- Maximum control over conservation outcomes, access, and future use.
- Eliminates subdivision/encroachment risks and provides flexibility for restoration, buffers, and amenities.
- Strongest long-term protection with a single, clean ownership solution.

Scenario Four

- (secures long term access, limited eco protection, opps for Indigenous education)
- Cost-effective way to secure the critical public-access spine without paying for the entire parcel.
- Targeted acquisition reduces due diligence and closing complexity.
- Maintains options for future expansion if circumstances or funding improve.

Scenario Five

- (easement terms may restrict Indigenous land use and recognition of Indigenous law and governance)
- Permanent, legally enforceable habitat protection across the whole site while keeping land in private ownership.
- Leverages the Ecological Gift Program for significant tax benefits to the landowner, improving deal feasibility.
- Lower acquisition outlay than fee simple; tailored restrictions protect ecological values and trail alignment.

Scenario Six

- (co-stewardship, Indigenous-led management, strongest form of land protection)

Scenario Seven

- (intentional opps for land return, shared stewardship)
- must message health of planet over profit



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Overarching question:

What if archeological findings indicate further research is required. Like small holes dug to see what is in those holes ancestors belongings, cultural resource resources. This will provide additional information cultural knowledge, ancestral knowledge that could be used in programs or self-directed signs on the trail..

APPENDIX E

**FACETS RESEARCH ARTICLE:
LEARNING FROM PAST
COLLABORATIVE
EXPERIENCES**

A decorative graphic consisting of a series of concentric, wavy lines of green dots, creating a ripple effect that originates from the center and expands outwards towards the right side of the page.

Learning from past collaborative experiences: setting a pathway for natural sciences and engineering researchers to support Indigenous-driven aims

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Abstract

In efforts to contribute towards reconciliation, some researchers have shown increased interest in collaborative work with Indigenous Peoples. However, those in technical fields, such as the natural sciences and engineering, are not traditionally trained in how to carry out Indigenous-driven research. This study learned from the successes and challenges of past technical research collaborations to better understand how these researchers can act as stronger allies. Qualitative interviews were carried out with five members of Indigenous communities and 35 researchers. The results showed diverse experiences and the need for more collaborative frameworks and supportive institutional environments within the natural sciences and engineering. Findings highlighted the wide range of issues to be considered in such work, grouped into (1) assessing personal preparation and mindset; (2) building and maintaining relationships; (3) community-aligned benefit; (4) practical and financial considerations; and (5) knowledge sharing and communication. In addition, participants identified institutional-level factors that could help (e.g., mentorship) or hinder (e.g., current recognition structures in many technical fields) efforts to carry out Indigenous-driven technical research. These results may stimulate and contribute to necessary work in the natural sciences and engineering on processes for equitable and thoughtful engagement with members of Indigenous communities to support Indigenous-driven research.

Key words: reconciliation, natural sciences and engineering research, research ethics, Indigenous Peoples, Indigenous-driven research, institutional policies

Introduction

Since the final report of the Truth and Reconciliation Commission (Truth and Reconciliation Commission of Canada 2015), many natural sciences and engineering researchers and institutions have increased efforts to support reconciliation with Indigenous Peoples. This has included, for instance, commitments by Canada's main funder of natural sciences and engineering research (NSERC 2022), university-level strategies (University of Toronto 2017; University of Victoria 2017), and a growing number of collaborations between these researchers and some of the many and diverse Indigenous communities in Canada (for example, Kobluk et al. 2021; Codrington et al. 2022; Yarchuk et al. 2024). Within this diversity of both Indigenous Peoples and natural sciences and engineering researchers, some may find shared values

(e.g., equity, sustainability) as well as common interests in areas such as climate change, conservation, healthy housing, and ocean management (Wong et al. 2020; Ocean Networks Canada 2021; IOF 2022; Dimayuga et al. 2023; Lyeo et al. 2024). The potential strengths from engaging with Indigenous Knowledge Systems and Western natural sciences and engineering in mutually respectful ways have been discussed in frameworks such as Two-Eyed Seeing and The Three Sisters (Bartlett et al. 2012; Kimmerer 2013), and have begun to be demonstrated in practice (Reid et al. 2021).

While increased interest in reconciliation from the natural sciences and engineering is a positive trend, some Indigenous leaders have voiced concern about pressures on their communities as a growing number of researchers seek to collaborate and partner (Canada Research Coordinating

Committee 2019). In addition, research has a colonial history of exploitative practices, which has led to distrust of research among many Indigenous Peoples (Smith 2021). The fields of natural sciences and engineering have also been responsible for the degradation of lands and cultures of Indigenous Peoples through large-scale infrastructure projects, resource extraction, and colonial land and wildlife management policies (Cowen 2020; Snook et al. 2020). There are still cases today where natural sciences and engineering research is carried out without appropriate respect for Indigenous rights or for the benefits brought when members of Indigenous communities lead and collaborate in research (Wong et al. 2020). In this paper, we use the term “respectful research” to denote research practices with Indigenous Peoples that value and prioritize the experiences and perceptions of the research process by those Peoples themselves. In respectful research, partnerships are emphasized and the communities feel that the research aligns with their cultures, worldviews, and priorities (Wilson 2008; Dimayuga et al. 2023).

For guidance on how to carry out respectful research with Indigenous Peoples, there is a growing body of literature from Indigenous scholars. However, this is based primarily in the social and health sciences. This includes the work of Smith (2021), who argues that Indigenous cultural values and practices must be centred in Indigenous-focused research. It also encompasses the writings of Wilson (2008) on research as a sacred ceremonial process that understands and honours relationships and relational accountability. Relational accountability refers to care and responsibility towards research collaborators and communities, as well as to relationships with the natural world and future generations (Wilson 2008). Research ethics protocols provide further guidance, including those of national scope (CIHR et al. 2022), and those developed by Indigenous communities and organizations to be specific to local context and values (Hayward et al. 2021). However, Wong et al. (2020) argue that many natural scientists may be unaware of this guidance or fail to see the need if they are working in Indigenous territories but not directly in contact with the people who live there. The same may be argued for the field of engineering, in which students are primarily trained in technical areas often without historical context or understanding of Indigenous, cross-cultural, empathetic, or participatory approaches. Engineers Canada recently highlighted the need to create cultural safety for Indigenous students and faculty in engineering programs at Canadian universities; a field in which it is estimated that only 0.73% identify as Indigenous Peoples (Wolf and Martynussen 2022). In addition, a recent literature review found few technical studies that reported on respectful research practices when collaborating with Indigenous Peoples, and a general lack of detail in how collaborations were carried out among those that were reported (Dimayuga et al. 2023).

It is clear that commitment to reconciliation from researchers and institutions within the natural sciences and engineering needs to be coupled with a better understanding of equitable and respectful research processes with members of Indigenous communities. This article describes the results of qualitative interviews with members of Indigenous communities and researchers who have participated in col-

laborative technical research to learn from their successes, challenges, and perspectives. In the context of the diversity of Indigenous communities and their varied cultures, values, and needs, we did not aim to produce a checklist of practices for others to follow. Rather, we sought to provide considerations to stimulate thought and preparation, and examples of what it can look like and feel like to engage in collaborative technical research with Indigenous communities. We hope the findings of this work will (a) help better prepare researchers from technical fields to make initial outreach to specific Indigenous communities in informed and respectful ways; (b) provide key considerations for working in respectful ways with Indigenous Peoples; and (c) identify areas for institutional action to better support natural sciences and engineering research that is Indigenous-driven.

Methods

Study motivation and partnerships

This research emerged from discussions between the University of Toronto Reconciliation Through Engineering Initiative (RTEI), the IISAAK OLAM Foundation (IOF), and the National Research Council (NRC) Ocean Program. In their respective areas, all had encountered natural scientists and engineers striving to work respectfully and collaboratively with Indigenous Peoples. While they saw potential for technical skills to be of use to Indigenous-driven aims, there was also the risk for harm if these efforts were not supported by informed and ethical practices. Thus, this project, along with the collaboration between RTEI, IOF, and the NRC Ocean Program, was born. The approach to our partnership was guided by the work of Mi'kmaw Elder Marshall on Two-Eyed Seeing (Bartlett et al. 2012; Bartlett 2015). Two-Eyed Seeing encourages collaborators to learn about and respect the strengths of Indigenous Knowledges alongside Western ones, and to apply both to increase understanding and benefit for all (Bartlett et al. 2012). We also learned from broader relevant literature, such as that on ethical space (Willie 2007), relational accountability (Wilson 2008; Latulippe 2015), and research ethics (CIHR et al. 2022). In support of these frameworks, we embedded a collaborative approach into the governance of the project. A Memorandum of Understanding was developed by RTEI and IOF, and an Advisory Group was established to provide ongoing guidance.

Positionality

Our varied social positions and lived experiences have necessarily shaped our approach to the project and interpretation of the results. We come from diverse cultural backgrounds, with HLG, MCR, and AMB of European-settler ancestry, RD as a second-generation immigrant from South Asia, and AC a visiting international student with East Asian heritage. BBC is a member of the Chippewas of Georgina Island and a community activist who has worked on various research collaborations in support of sustainable housing and natural building materials. EG is a journalist of Cree-Métis, Filipina, Scottish, and Irish descent who works as a Senior Communications Advisor and Community Storyteller

with Coastal First Nations. KD is an engineering professor of European-settler ancestry who works with rural and Indigenous communities on water quality and technology, while EW is an engineer and PhD Candidate of settler ancestry who works on human-centred curriculum and Indigenous Protected and Conserved Areas with IOF.

Through the project's course we sought to learn from each other, with loosely structured meetings that allowed ample time for discussion. For the non-Indigenous researchers at RTEI who carried out the day-to-day activities of the project, we grappled in an ongoing way to understand what role we should play in this space and how to follow through on guidance from our partners. At the same time as collecting data on respectful research, we encountered challenges and considerations similar to those being shared with us. Partners with greater experience working with Indigenous communities provided guidance and connections to support outreach. They also pushed the Western-trained researchers to think in new ways about emerging findings and present these through the lenses of nature and the environment.

Participants

Using purposive sampling (Guest et al. 2017), two groups of participants were invited who would be able to share perspectives on Indigenous-driven research and lessons from past technical research collaborations. The first was members of Indigenous communities who had previously collaborated with technical researchers and were based in Canada. With awareness of the potential burden of external requests on Indigenous communities, we focused on individuals who worked in the public sphere as leaders or advocates. These participants were also chosen with consideration to accessibility through existing connections and some geographic dispersion. The second group was researchers in Canada who had engaged in work with Indigenous Peoples in the natural sciences, engineering, or another technical discipline, or who had collaborated with such technical researchers.

Initial recruitment was carried out through the networks of the project partners and supplemented by snowball recruitment to build off connections from initial contacts (Guest et al. 2017). In total, five community members from four different First Nations (Chippewas of Georgina Island, Metlakatla, Whitebear, and Wuikinuxv) participated in this project. Two of these Nations are located on the west coast of Canada, while the other two are in Saskatchewan and Ontario. The Indigenous community members shared their perspectives as individuals, not as official representatives of their Nations. Early designs proposed a greater number of community participants but were adapted to account for recruitment challenges and a priority on depth of connection rather than number of people. We recognize that the perspectives shared by these five Indigenous community members are not representative of the vast diversity that exists both between and within First Nation, Inuit, and Métis communities. It was not the intent of this project, nor would it be appropriate to attempt, to speak for this diversity of Indigenous Peoples. Rather, we sought to showcase some perspectives to stimulate critical reflection on Indigenous-driven re-

search and encourage readers to remain open and adaptable to the particular cultures, values, contexts, and aims of different Indigenous communities. In addition to Indigenous community members, 35 researchers were interviewed, including lead researchers ($n = 19$), trainees such as graduate students and postdoctoral fellows ($n = 11$), and others (e.g., research managers or administrators, $n = 5$). Of these researchers, three self-identified as Métis and one as First Nation.

Qualitative interviews and analysis

Between March 2022 and September 2023, HLG, AC, and RD carried out semi-structured qualitative interviews (Kelly 2012). These were guided by open-ended questions (see Supplementary Material 1 and 2), which differed for community members and researchers, and allowed adaptation to the flow of conversation. The majority of participants ($n = 35$) were interviewed virtually for geographic flexibility and to be consistent with COVID-19 policies at the time of project design. As pandemic restrictions eased and to allow for greater personal connections where possible, five interviews were held in-person, including with four of the five participants from Indigenous communities. Interviews were transcribed verbatim, returned to participants for review, and imported into NVivo 12 for data management and analysis. Inductive thematic analysis was used to first code relevant segments of text, then review and group codes into broader themes, and finally review themes to consider higher level connections between groups (Braun and Clarke 2006). This was an iterative process in which codes and themes were constantly compared to ensure consistency and credibility in the analysis (Green and Thorogood 2009). To maximize rigour, three team members (HLG, AC, and RD) separately coded four transcripts and discussed together in-depth to develop a preliminary set of codes. This was applied and adapted as HLG and AC analysed future transcripts. This process was accompanied by frequent discussion between the research team, as well as the validation of emerging findings by email with research participants and in meetings with the Advisory Group.

Research ethics

This project was approved by the research ethics boards of the University of Toronto and the NRC. All participants provided informed consent prior to their participation. Given the history of uncredited research with Indigenous Peoples (Smith 2021), participants from Indigenous communities were asked for their preferences on anonymity during the informed consent process. All community participants chose for their identity and Nation to be openly credited in reporting. In addition, we returned raw data and summary reports to the participants to respect First Nations OCAP (Ownership, Control, Access, Possession) Principles (FNIGC 2023).

Results

In this section, we present key themes from the interviews with members of Indigenous communities and researchers. Their stories showed diverse and sometimes very personal motivations for engaging in collaborative research,

and that there was not one way of getting connected, learning from each other, and working together. Some spoke of research attempts that did not meet expectations, while others described journeys to deep and fruitful research relationships. From these detailed stories and reflections, the findings are summarized into (1) the need to prepare technical researchers to work ethically and respectfully in support of Indigenous-driven research; (2) key considerations for individual researchers and research teams; and (3) institutional-level factors. Selected quotes from participants accompany the theme descriptions. Except in cases where participants wished for their full names to be credited, pseudonyms have replaced real names.

The need to prepare technical researchers

Throughout the interviews, the experiences and perspectives shared reinforced the need to appropriately prepare researchers from technical fields to work ethically and respectfully in support of Indigenous-driven research. All of the community members interviewed spoke of expectations that research prioritize their needs, values, and timelines. Only if this was the case, then these community members identified potential interest in research partnerships and saw a possibility to leverage research to advance community goals. These community members shared diverse details about the context of their communities, needs, and rationales for engaging in research. The needs they discussed intersected with skills of technical researchers in areas such as addressing housing decay, protecting coastal areas from erosion, and monitoring wildlife. Research could also be a tool to combat struggles to have Indigenous voices valued by decision-makers:

“When the [eulachon] collapse first started, this is one of the things that I remember hearing my dad talk about all the time, is that they were trying to go to government and say, “You need to do something about this”...The government said, “You don’t have any evidence. It’s all anecdotal!” (Jennifer Walkus, Wuikinuxv First Nation)

At the same time as these expectations and potential interest from members of Indigenous communities, however, 17 researchers spoke of a lack of training and/or support in the natural sciences and engineering to facilitate respectful work with Indigenous Peoples. Some felt unsupported or alone among their peers when they attempted such projects, while others worried of harm to communities from ill-prepared researchers in a climate in which working with Indigenous Peoples was very “fundable”. Training in natural sciences and engineering programs was generally felt to focus on technical competencies and lack content available in other disciplines on Indigenous history, interdisciplinary methods, and Indigenous cultural competency. This was spoken of with particular feeling among the trainees interviewed, with eight of the 11 trainees describing activities outside of coursework to prepare themselves which, for some, was not valued by their programs:

“I had all this core material to learn...really detailed methodological things to learn and a lot of technical skills...Then there was this whole

other piece that was the cultural awareness, the understanding colonial histories, the understanding the Nations where I was going to. I was kind of expected to do that in my free time and I had no free time because I was a PhD student prepping for the field...I didn’t feel supported in all that extracurricular work I was doing. I wanted that to be valued as much as was learning how to code in R.” (Maryam, Non-Indigenous Researcher)

Key considerations for individual researchers and teams

The prior section speaks to the need to better prepare technical researchers to carry out Indigenous-driven research. Building on this, five key considerations are presented for individual researchers and research teams who wish to carry out such work. These are summarized in [Table 1](#) and are expanded upon below.

Assessing personal preparation and mindset for a community-centred approach

Thirty-nine of the 40 participants, across all groups, spoke to the importance of a mindset that centres community needs and values, and is aware of the history and ongoing impacts of colonization. Assessment of preparation and mindset should come early and may be a different starting point from the more typical technical research process of first developing ideas and then seeking funding and partnerships based on those ideas:

“If someone came and talked to me and they had the kind of background I do, no history and no contacts, I would say, stop...Don’t do anything, don’t write anything, don’t get invested in any way until you have spoken to people about what this means and how to do it with the best standards of ethics and engagement.” (Isabel, Non-Indigenous Researcher)

Researchers described efforts to educate themselves through online courses, articles, blogs, videos, and community websites. Reflecting on what they had learned, some researchers described how the goal of this education should not be to become an expert. Instead, preparing yourself helps to reduce the burden on the community ($n = 10$), open the mind to other viewpoints ($n = 17$), and adopt an approach that is humble, prepared to listen, and be of service ($n = 24$). Particularly for non-Indigenous researchers, preparation can include a commitment to reflecting on and working through any discomfort encountered from working across cultures or from community member reactions to settler-scientists within the ongoing legacy of colonialism. These discussions coalesced into the notion that technical researchers should spend time in honest reflection on their position, intentions, and personal capacity before deciding to reach out to an Indigenous community for research collaboration.

Building and maintaining trust and relationships

Building and maintaining trust and relationships was discussed in depth. A key element was “starting from a place of relationship-building” whereby people and process are val-

Table 1. Summary of key considerations for individual researchers and research teams when planning and undertaking Indigenous-driven research.

Key consideration	Description	Sub-themes	Number of participants (n = 40)			
			Community (n = 5)	Lead researcher (n = 20)	Trainee (n = 11)	Other researchers (n = 4)
Assessing Personal Preparation and Mindset for a Community-Centred Approach	The starting point of doing work with Indigenous communities, before reaching out to potential collaborators or designing a project. Includes taking steps to be informed about context and reflect on mindset.	<ul style="list-style-type: none"> • Understand that this is different from typical technical research • Do homework to learn about colonialism, Indigenous cultures, etc. • Consider mindset: humility, flexibility, service mentality • Self-reflect and decide to commit 	5	19	11	4
Building and Maintaining Trust and Relationships	Relationships are central to collaborative work with Indigenous communities and often more important than the project itself. Building and maintaining trust takes time and commitment.	<ul style="list-style-type: none"> • Value process • Build off existing relationships • Make time to connect and listen • Be there in person • Respect place in community • Honour responsibilities 	5	18	10	4
Community-Aligned Action and Benefit	Research should be shaped to community needs and focused on benefit to community in process and/or outcomes.	<ul style="list-style-type: none"> • It has to come from, or adapt to, community • Share decision-making power • Holistic understanding of issues needed • Respect community priorities and capacity • Benefit community 	5	20	11	4
Practical and Financial Considerations	Detailed logistical and financial planning can set the stage to carry out research for Indigenous-driven aims.	<ul style="list-style-type: none"> • Seek approval from community structures • Plan for sufficient time and budget • Consider logistics of community meetings • Discuss data management • Build interdisciplinary teams 	4	20	11	3
Communication and Knowledge Sharing	Effective communication can support relationships as well as efforts to effect policy change using research outputs. Care should be taken to verify and respect community wishes around knowledge sharing	<ul style="list-style-type: none"> • Ongoing communication supports relationships • Verify results with community • Design science communication to be concise, plain language, and linked to community priorities • Considerations when communicating Indigenous Knowledges 	4	14	9	3

ued, and the relationship is prioritized over the research agenda or timeline. Among the community members this was evident in different ways, with some ($n = 3$) emphasizing humbleness and personal connection and others ($n = 2$) speaking more of a structured community process towards research relationships. For all, whether stated explicitly or implicitly, positive or negative experiences with one research group were remembered and could affect the willingness to work with other researchers in the future.

Spending time in community and on the land and helping where appropriate were consistently identified by both com-

munity members and researchers as important to building relationships, showing commitment, and letting these expand naturally around shared interests:

“You can’t build relationships through emails and Zoom with community members. It’s just not how you do it. By showing up physically you show that you are serious, and you care about your relationship with them.” (Kai, Indigenous Researcher)

Researchers described how initial connections may be made easier by building off the existing relationships of supervisors or colleagues ($n = 17$) and/or working closely with

a community liaison ($n = 19$). The element of time flowed through discussions of relationships, with significant time spoken of as required to begin new relationships and continued time investments as important to build and maintain trust. For researchers to understand their place in community was also an important part of successful relationships. This included respecting that community priorities come before research ones and that timelines sometimes need to be adapted to events such as a death in community or to seasonal changes in community schedules. Responsibilities to community should also be honoured, and examples were given of expanding from Master's to PhD studies to allow time for community goals to be addressed, and committing to relationships for the long-term:

"Relationships with Indigenous Peoples are forever. You don't begin working with a community with the expectation that you're going to leave that community after you're done your thesis or your project."
(Léo, Non-Indigenous Researcher)

In practice, this long-term commitment may mean working with one or a few communities for an entire career or simply keeping an open line of communication past completed research and an ongoing willingness to try to meet needs as they arise.

Community-aligned benefit and action

The next key consideration is the need to centre Indigenous-driven needs and benefits within the research process. Interviews with members of Indigenous communities made it clear that research was one tool in a range of approaches to influence decision-makers and provide tangible benefits to their peoples. All of the community member participants ($n = 5$) spoke of how research aims should come from or adapt to benefit the community itself. This was echoed by many of the researchers ($n = 26$) and sets the stage for a respectful approach. This can be supported by actions to share decision-making power through such mechanisms as memorandums of understanding, advisory groups, and partnerships. As Oliver, a non-Indigenous researcher, described: *"If your boss says, 'I don't want you to do it this way, I want you to do it that way,' you comply. The communities are my boss."* Part of creating Indigenous-driven research was also the importance of a holistic understanding of issues in context. That is, that technical researchers cannot merely focus on technical solutions without considering a particular community's history, values and political context, as well as the larger systems context and potential impacts of technical solutions on other aspects of the community and ecosystems.

The participants also provided examples of how the process of research and its outcomes could provide tangible benefits to a community. These included, for instance, developing briefing notes for use in consultation and advocacy activities, establishing monitoring programs for wildlife and ocean patterns, leading in-school or land-based science workshops, and preserving the voices of Elders in recordings. Flowing through this discussion was the recognition that the outputs often valued by natural sciences and engineering researchers

(e.g., academic publications) may be different from those valued by the Indigenous community with whom they work.

Practical and financial considerations

The fourth key consideration is a group of practical issues to think about in the planning and implementation of research for Indigenous-driven aims. Three of the five community members interviewed spoke of the need for research approval from community structures. These three noted that their communities had structures to evaluate, approve, and monitor research by external actors. This may not be the case for other Indigenous communities, as significant diversity exists in the resources and capacity available for such purposes. Robert Nelson shared details of Metlakatla First Nation's robust structure to review and evaluate external applications. He also described how it sometimes takes outsiders time to understand that his Nation is in charge of what happens on their lands and waters:

"It took a long time for them to understand...they have to make sure all the engineers, whether it's placing the rock or looking after the title mark or looking after anything, they have to make sure that Metlakatla Stewardship Society is notified." (Robert Nelson, Metlakatla First Nation)

Other practical considerations include allowing sufficient time for a community-engaged process. For both community members and researchers this was discussed as important to relationships. However researchers, and particularly trainees, also emphasized time constraints related to program requirements and funding timelines. Questions about appropriate budgeting to support research activities were asked of researchers. Identified budget items included some that might be unfamiliar to natural sciences and engineering researchers used to lab-based or industry-partnered projects. For example, generous travel budgets to support time in potentially remote communities, food and hosting costs for community meetings, honoraria and gifting, and community capacity-building (e.g., hiring local staff, staying in local accommodations, providing equipment). Planning for appropriate data management was also raised by both community members and researchers, with particular reference to OCAP Principles (FNIGC 2023). Discussion showed that there was not one set way to enact OCAP, and asking about and respecting wishes around how data are stored and used was considered to be most important. A final practical consideration was to build interdisciplinary teams to provide necessary insight and experience. Technical researchers described working with community members, a cultural advisor with whom that community is familiar and comfortable, advisory groups, and social scientist colleagues.

Communication and knowledge sharing

The final key consideration for individual researchers and teams was communication and knowledge sharing. On the one hand, communication is an integral piece of embedding the community in an ongoing way in the research process, and communication and knowledge sharing was discussed by four of the community members and 26 of the researchers. In addition, verifying and sharing data with the community was

identified as a key activity later in the research process. Practical examples of what this meant included hosting a community gathering with food, activities, and a presentation of results. Other means of communication included newsletters, blog posts, and brief documents created with the assistance of graphic designers. Within this discussion was a sense of care with regards to community data, with links back to practical considerations around data management and respect for OCAP. At times, this means that the results of the research may be used only by the community instead of shared publicly. It is important for researchers to prepare themselves to follow a particular community's wishes regarding how results may or may not be shared instead of their own expectations for academic publication.

Effective communication to non-scientific audiences was noted by some participants as a general weakness among researchers in technical fields. This was presented as a barrier both to communicating with communities and to sharing results with decision-makers to further Indigenous-driven action-oriented goals. Science communication was pointed to as an area in which more training is needed, and one that researchers should value, budget, and plan for as part of their research activities. At a higher level still, four community members and eight researchers shared their overarching perspectives on knowledge sharing when working with Indigenous and Western scientific knowledges. This was discussed as an area in which work is still needed to ensure that the strengths of each knowledge system are equally valued. Some expressed caution around the current focus on "braiding" knowledges and pointed to the history of "cherry-picking" Indigenous Knowledges, "shoehorning" them to fit Western narratives, or "validating one against the other".

Institutional-level factors

Earlier in this section we discussed results that spoke to the need to better prepare natural sciences and engineering researchers to carry out research for Indigenous-driven aims, followed by five key considerations for individual researchers and research teams who wish to carry out such work. In this final results section, we summarize four institutional-level factors that were identified by the participants. Depending on context and circumstances, each of these factors was spoken of as either supporting efforts towards Indigenous-driven technical research or making such efforts more difficult. This is described with respect to each of the factors below.

Mentorship

Researchers, and particularly students, who had access to strong mentorship ($n = 15$) identified this as crucial to learning about and facilitating respectful partnerships with Indigenous Peoples. This mentorship included that from within research institutions (e.g., Indigenous scholars, supervisors) as well as from within Indigenous communities (e.g., Elders, community partners). These mentors shared guidance, provided connections to Indigenous partners, and fostered environments that prioritized community work (e.g., routine discussion of treaty rights, support for adaptation to community needs).

On the other hand, researchers who lacked strong mentorship ($n = 9$) discussed this as a challenge. Some described how those they looked to for mentorship within their technical programs (e.g., supervisors) were also new to working with Indigenous communities and could not provide advice on what to read, did not have existing contacts to build from, and were unfamiliar with how to complete research ethics applications. One graduate student shared how her thesis committee had urged her to quit her studies because they felt she was not meeting her program timelines as she invested significant time and effort into relationship-building and knowledge-sharing with the Indigenous communities engaged in her research.

Institutional policies and processes

A second institutional-level factor is that of institutional policies and processes. Sometimes, these could help to create environments conducive to building and sustaining research relationships for Indigenous-driven aims. This was the case for researchers who spoke of strong ties between their academic institutions and local Indigenous communities, or who worked within clear mandates and leadership support for partnerships with Indigenous Peoples. Some researchers in government institutions spoke of how they had stable, long-term funding as well as flexible timelines. They described this as a better fit for sustaining relationships with Indigenous communities than typical one- to two-year academic timelines and funding.

However, institutional policies and processes could also present challenges. Short graduate program timelines ($n = 16$), particularly for Master's students, were identified as a poor fit for the time needed to build relationships and follow a flexible, Indigenous-led process. The research ethics and approval process was also discussed ($n = 14$), in relation to sometimes lengthy timelines for ethics approval, the importance of valuing community ethics over institutional ones, and the suggestion that ethical review should be more routine in the fields of natural sciences and engineering. In addition, financial policies around honoraria and compensation sometimes acted as obstacles to paying Indigenous collaborators in appropriate, timely, and barrier-free ways ($n = 11$).

Incentive and recognition structures

A third institutional-level factor was incentive and recognition structures ($n = 20$), which were spoken of as generally not structured to support respectful, Indigenous-driven research. Current structures were viewed as encouraging researchers to produce outputs that would advance their own careers rather than community-oriented processes and benefits:

"This whole idea of how we do science, the way the incentives are given to researchers, the system by which they're trained, the way that they progress through their careers, is not conducive to being accountable and having humility...If there's researchers out there that are just looking for their next funding and their next papers and stuff like that, we're going to have this problem all the time." (Emma, Non-Indigenous Researcher)

Part of the issue was seen as a lack of recognition and understanding in technical fields of the time and effort that is required to carry out community-engaged work: “It’s assumed that it’s part of the project manager’s work, but I don’t think we’re aware at [institution] how much time that can consume and how much time it requires to do it effectively” (Tomas, *Non-Indigenous Researcher*). This can lead to concerns, particularly for early researchers, about the impact on their future opportunities if carrying out research different from that typical of their fields that results in fewer academic publications.

Funding structures

The final institutional-level factor identified was funding structures ($n = 30$). Although researchers recognized that funding structures were changing to better support research for Indigenous-driven aims, these were still primarily presented as a challenge. Some participants ($n = 9$) felt that funding structures felt backwards because many do not support early conversations to identify community needs but do require detailed explanations of planned research. Others expressed that short-term funding made it difficult to support the long-term relationships that are foundational to work with Indigenous communities ($n = 12$), spoke of challenges with appropriately compensating for and funding the types of activities required for Indigenous-driven work ($n = 11$), and discussed the ability of research institutions to access and hold funding and the power this gives over research direction, process and timelines ($n = 6$). Even considering these challenges, researchers holding established relationships with communities showed a commitment to leveraging funding to serve the interests of those with whom they worked by, for example, writing grants knowing that project details would adapt to community interests, lengthening timelines when needed, and paying community members out-of-pocket to ensure timely and barrier-free compensation. One researcher noted that they had occasionally worked with financial administrators knowledgeable about community-engaged research and willing to advance funds to compensate community members. This suggests that building awareness about community-engaged research among financial administrators at research institutions could help to shift policies and practices to avoid the need for out-of-pocket payments by researchers.

Discussion

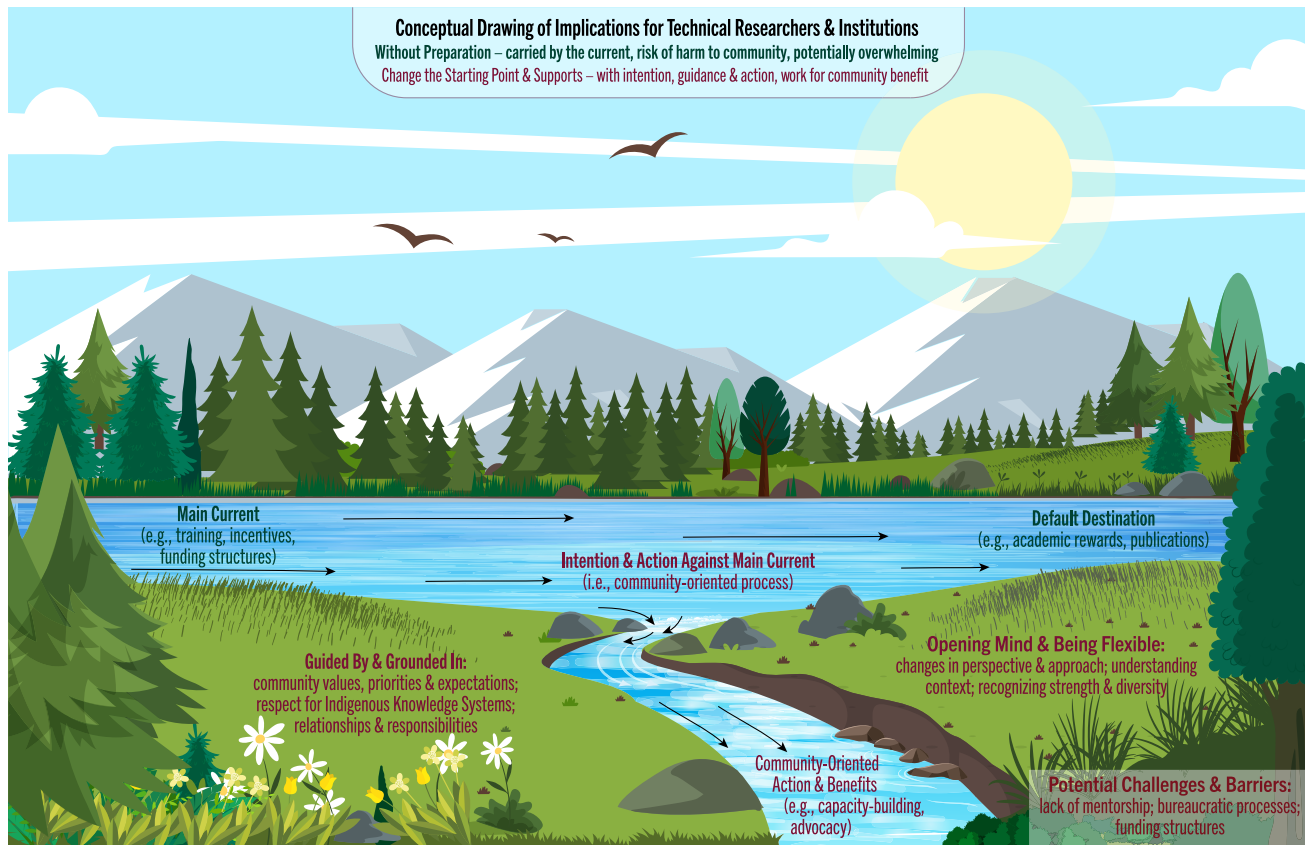
Overall, the results of this study align with the growing body of literature on the importance of ethical and respectful Indigenous-driven research. Researchers who wish to work with Indigenous communities should do so from a position that supports Indigenous-determined goals and respects the power of Indigenous Peoples to control what activities are carried out in their territories and with their data (Wong et al. 2020; Cannon et al. 2024). The power of Indigenous Peoples is particularly shown in the ways in which Indigenous organizations, leaders, and scholars are driving interest and action in key areas not only of relevance to their communities but to the broader population. This includes, for instance, the Assembly of First Nations calling attention to mold and

decay in housing on First Nation reserves and Keepers of the Circle providing training pathways and partnerships for Indigenous women to help build sustainable and healthy housing (Assembly of First Nations 2022; Keepers of the Circle 2024). It also includes leading conservation efforts by such action as Indigenous Protected and Conserved Areas (IOF 2022). Through this work, the strengths of Indigenous Knowledge Systems are evident. Indigenous Knowledge Systems upheld balanced relationships with nature for thousands of years prior to colonization and often encourage a relational approach that values responsibilities to each other, the environment, and to future generations (Wilson 2008; McGregor et al. 2023). Non-Indigenous researchers should be attentive to the fact that an Indigenous research agenda may not always include a role for them (Williams et al. 2020). On the other hand, there is also the potential for collaboration between Indigenous and Western scientific knowledges to create greater understanding if this is carried out within a process that equally values both (Bartlett et al. 2012; Latulippe 2015).

The results of this study reinforce the need to increase efforts within the natural sciences and engineering to support research for Indigenous-driven aims. Participants identified that more researchers are taking interest in working with Indigenous communities but that they have not necessarily been trained to do this work well. Based on the experiences and perspectives shared by members of Indigenous communities and researchers who have engaged in collaborative work, we presented key considerations to stimulate thought and preparation among others planning and carrying out such endeavours. While these considerations were discussed by both community members and researchers, we found the emphasis within them sometimes differed between these two groups. The interviews with Indigenous community members were each set within the significant detail and context they shared about their specific communities. Despite evident diversity in locations, needs, cultures, and resources between their communities, through all of their discussions was an emphasis on action and advocacy to advance community priorities. For the Indigenous community members, this emphasis on action flowed through all the other themes from preparation and expectations for researchers, to community-aligned benefits of projects, to effective knowledge sharing. While working for community benefit was also raised by all the researchers interviewed, all but four were non-Indigenous researchers and the majority of the discussions were less personal and political in terms of motivations for research. For researchers, cutting across all the other themes was a sense of struggle against the established processes of their institutional systems as they attempted to carry out research for Indigenous-driven aims. Researchers who were more experienced or trainees with strong mentorship seemed to have more positive experiences than those who were newer to the field and/or lacked such mentorship.

In all, the lessons learned from this project show a need to re-frame the starting point in the research process away from specific project design to assessing personal preparation and mindset to support Indigenous-driven technical research. They also point to factors of the institutional

Fig. 1. Conceptual drawing of implications for researchers and their institutions.



environment that can help to facilitate or hinder respectful research for Indigenous-driven aims. In Fig. 1, we share a conceptual drawing to represent the high-level implications of these results for researchers and their institutions. The forces at play driving the direction and focus of technical researchers may be viewed as the currents in a strong river flowing towards its main destination. These currents are the training programs, funding, and reward structures that incentivize natural sciences and engineering researchers to work within relatively short timelines and to produce academic outputs of benefit to their careers. A deeper consideration of the river and its roots leads one to understand where it flows from (e.g., colonial institutions), and the push of its main current (i.e., Western science-centred power).

At the same time, some researchers and partners work against the main current of the river towards an alternative route (an Indigenous community-oriented and community need-based process). This route requires a different starting point. Rather than jumping straight in, it takes deliberate action and significant effort and commitment, as its destination (community-oriented benefits) is not primarily supported by the main current in technical fields. It also requires guides who are familiar with this route and understand how to travel it (e.g., community partners, Indigenous advisors, mentors). Along the way, if they listen and remain open and flexible, researchers will come to see and understand strength, diversity, and connectedness (i.e., Indigenous worldviews, diversity, and action). However, it is also a rockier route with

potential barriers along the way (e.g., bureaucratic processes). Without adequate preparation, even with the best intentions, researchers may be carried by the main currents to more typical academic outcomes or feel overwhelmed by the process. With the appropriate preparation, however, technical researchers may successfully contribute to Indigenous-driven aims and reconciliation.

Recommendations

Further to this conceptual understanding and grounded in the findings of this research, we recommend six actions for research and research funding institutions to help foster environments supportive of respectful research with Indigenous Peoples. While the majority of the results earlier in this article speak to actions that individual researchers and students can take to support Indigenous-driven research, the recommendations in this section focus on the need for structural change within the institutions these researchers work. Such institutions are not limited to academia but may include those in the public and non-profit sectors as well. The specific recommendations we provide are set within a broader need for the decolonization of research and research funding institutions to support Indigenous self-determination. Decolonization is a term that may be used in different ways by different authors (Cicek et al. 2023). In this article, we understand decolonizing efforts as seeking to make space for Indigenous and international cultures by working to remove

Table 2. Recommendations for institutions to foster research in support of Indigenous-driven aims.

Recommendation 1: Mandate Indigenous cultural competency training for all staff at all levels in research and funding institutions
Recommendation 2: Work within and across research institutions to draw on expertise in other disciplines to increase training and mentorship for technical researchers in Indigenous studies and community-engaged research methods
Recommendation 3: Adapt work planning, incentive, and recognition systems within research institutions to value all stages of community-engaged research and community-oriented outputs
Recommendation 4: Revise funding structures to increase community-held funding and long-term funding to support ongoing relationships with Indigenous communities
Recommendation 5: Consider mechanisms to facilitate and sustain long-term connections between research institutions and Indigenous communities
Recommendation 6: Increase Indigenous representation in research institutions and invest in capacity-building in technical research for Indigenous Peoples and communities

bias and hierarchies that privilege Western approaches (Wolf et al. 2022; Hill et al. 2023). In light of this, decolonizing institutions and training programs may be considered as groundwork to create mindsets and spaces for undertaking collaborative approaches, such as Two-Eyed Seeing, that promote respectful work across both Indigenous and Western scientific worldviews. While some institutions have taken steps towards decolonization (University of Toronto 2017; University of Victoria 2017; Canada Research Coordinating Committee 2019), continued and concerted effort is required to ensure the implementation of strategic plans and progress towards stated goals. The recommendations that we provide from this research work in support of decolonization of research institutions, are listed in Table 2, and are discussed in more detail below.

The first of these recommendations is for research and research funding institutions to mandate Indigenous cultural competency training for all staff at all levels. Cultural competency training should aim to counter tendencies to overlook or homogenize the diversity of Indigenous Peoples and to create understanding of the importance of informing oneself about the particular place-based governing systems, protocols, and values of potential Indigenous partners. The Truth and Reconciliation Commission's Call to Action number 62 focuses on the need to embed Indigenous contributions and Knowledges into how we teach Canada's youngest students. The need for education and training to support reconciliation is further emphasized with respect to the corporate sector in Call to Action 92 (Truth and Reconciliation Commission of Canada 2015). These Calls to Action recognize the broad educational gaps that exist in Canadian society on understanding Indigenous history and worldviews. While examples of cultural competency training do exist at research institutions (University of Toronto 2021; Memorial University of Newfoundland 2024), these are often optional programs rather than mandatory ones.

Further to the first recommendation, as a second, we also suggest training and mentorship for technical researchers in Indigenous studies, community-engaged methods, and approaches that understand technical solutions within larger contexts (e.g., systems approaches, empathetic design). This specifically seeks to address the training limitations in natural sciences and engineering fields identified by the participants as well as siloing between disciplines. To support ef-

forts to add Indigenous context and increased self-reflection in technical training, it is possible to draw on an emerging body of resources on how to decolonize scientific institutions and the curriculum of fields such as engineering (Wolf et al. 2022; Cicek et al. 2023). For fields such as the natural sciences and engineering, this includes critical reflection on power relations within research institutions and on the power given to Western science to create evidence about our world (Hill et al. 2023).

Our third recommendation is to adapt incentive and recognition systems to value all stages of community-oriented research and outputs identified as valuable by communities themselves. These may include outputs not traditionally valued by research institutions to support community interests or respond to requests on the community (e.g., as part of government consultation and impact assessment processes). This involves a change in understanding of what is deemed to be a success by academic standards and how the performance of researchers is evaluated. For many researchers in the natural sciences and engineering, career progression may still be evaluated with academic publications as a primary indicator of success. This overlooks the significant time and effort community-engaged researchers put into such activities as relationship-building, establishing Memorandums of Understanding, and creating knowledge products of value to their Indigenous partners. One piece of changing the predominant paradigm of success is for researchers, within both academic and government institutions, to have dedicated and valued time in workplans for relationship-building and maintenance.

Fourthly, we recommend an increase in funding opportunities for technical research collaborations with Indigenous communities, particularly for funding held by Indigenous organizations and communities where the capacity exists to do so. Holding funding confers greater power over decision-making and the direction of research. Williams et al. (2020) argue for Indigenous research sovereignty, and that the current research governance approach enacted by Canada's main federal research funding agencies does not do enough to counter historic injustice towards Indigenous Peoples and support their research goals. At the same time, the resources and capacities of Indigenous communities vary greatly and, for some, holding research funding has the potential to create administrative burden. Investments in

Indigenous community-based research administration capacity is needed from Canada's federal research funders (Williams et al. 2020). Strategic partnerships between communities may also allow resources to be pooled, while individual researchers may contribute to capacity-building by hiring local community members to help with project administration, providing training to community members as part of projects, and offering their skills to support Indigenous partners in setting up research administration processes. Participants in this current study also spoke of the need for more long-term funding opportunities to account for the significant time investment that is required to build relationships and honour commitments to Indigenous communities.

As a fifth recommendation, we point to the need for mechanisms within technical research institutions to support sustained, long-term connections with local Indigenous communities. Such mechanisms may help to guide technical researchers who are less familiar with relationship-building processes and sustain relationships beyond single individuals. It may also make it easier to introduce researchers with tighter timelines (e.g., graduate students) into pre-existing collaborations in respectful ways. Examples of potential mechanisms may include permanent staff and dedicated offices within research institutions to engage in ongoing and non-project focused ways with local Indigenous communities, and to manage and provide advice to researchers within organizations. Demonstrated commitment to partnerships with local Indigenous communities by senior administration may also lay the foundation for relationships with researchers and teams, including supporting Elders and Knowledge Keepers to have roles in governance structures, participating in local community events where appropriate, and inviting feedback and open communication regarding the activities and directions of research institutions.

The final recommendation works in support of all the prior recommendations. While the intent is not to place the burden of reconciliation efforts on Indigenous Peoples themselves, increasing representation of Indigenous Peoples within research and funding institutions may go hand in hand with broader structural efforts to decolonize these institutions, support Indigenous-led research, and integrate Indigenous ways of knowing and doing into education and research processes. Indigenous Peoples are currently underrepresented among those holding science, technology, engineering, or mathematics degrees more broadly as well as within the profession of engineering (Wong et al. 2020; Wolf and Martinussen 2022). Examples of strategies to improve the recruitment and retention of postsecondary faculty and students include meaningfully incorporating Indigenous cultural supports on university campuses (e.g., Elders in residence, Indigenous cultural centres), implementing equity-based hiring processes including for senior administrative positions, providing, and supporting Indigenous mentors for new hires and students, targeted outreach and financial support for Indigenous students, and flexible learning options to allow students to remain connected to their home communities (Pidgeon 2016; University of Victoria 2017; King and Brigham 2022).

Conclusion

The aim of this study was not to reduce the complex experiences of the participants to a checklist of how to carry out natural sciences and engineering research supportive of Indigenous-driven aims. The successes, challenges, and perspectives shared with us throughout this project highlighted how such collaborative community-engaged work must be flexible to the diversity of Indigenous Peoples and their varied needs and values. At the same time, this research sought to add to the growing body of work on respectful research with Indigenous Peoples by moving from theoretical guidance to sensitizing and practical considerations for natural sciences and engineering researchers who are planning and implementing such collaborations. It also highlighted that within the institutions of technical researchers, increased work is needed to create environments supportive of Indigenous-driven aims rather than reinforcing a colonial history of extractive and exploitative research with Indigenous Peoples. Although focused specifically on guidance for natural scientists, engineers and other technical researchers, the relevance of the findings of this project are not necessarily restricted to these fields. We encourage all researchers who engage with this work to use the findings to stimulate thought and to reflect on whether and how they apply in the context of a specific collaboration, with a specific community, in a specific place.

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Data generated or analyzed during this study are not available to protect the confidentiality of the research participants.

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Supplementary material

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APPENDIX F

REFERENCE GUIDE: RESPECT AND RESPONSIBILITY



November 2021

RESPECT AND RESPONSIBILITY: INTEGRATING INDIGENOUS RIGHTS AND PRIVATE CONSERVATION IN CANADA

A Guide for Land Trusts and Other Non-Governmental Organizations

PREPARED BY

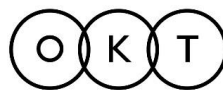
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**conservation
through
reconciliation
partnership**

Photo of trees and a bare mountain. This is Tzouhalem Cliffs in Chase Woods Nature Preserve, north of Duncan British Columbia in the traditional territory of Cowichan Tribes and other Hul'q'umi'num nations. Photo Credit: Tim Ennis.

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Over a 35-year career, Ian has played key roles in developing and applying the legal framework for creative conservation land securement, related tax incentives, protected areas and trails in Ontario and beyond. He has authored numerous publications and policy submissions and has advised diverse land holders, including land trusts and governments at all levels. He co-chairs the Indigenous Land Trust Circle of the Conservation through Reconciliation Partnership and is part of Indigenous ally groups. Ian is most at home on the land and waters of the Kawarthas and in fostering community.

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About the Conservation through Reconciliation Partnership

The Conservation through Reconciliation Partnership (CRP) is a supporting partner of this work. The CRP is an Indigenous-led network that brings together a diverse range of partners to advance Indigenous-led conservation across Turtle Island/Canada. Acting on the recommendations set out by the [Indigenous Circle of Experts](#), the CRP aims to transform the conservation sector by centring Indigenous leadership, laws, rights, responsibilities and knowledge. Launched in 2019, the CRP is co-hosted by the [IISAAK OLAM Foundation](#), the [University of Guelph](#) and the [Indigenous Leadership Initiative](#). For more information, including resources on Indigenous Protected and Conserved Areas (IPCAs), please visit www.conservation-reconciliation.ca or email crpinfo@uoguelph.ca

Statement of Support from the Nature Conservancy of Canada

When the [Nature Conservancy of Canada \(NCC\)](#) was established in 1962, it is likely few people in the growing conservation movement in Canada at the time gave much thought to Indigenous Peoples, much less their rights and the deep knowledge and responsibilities they held and maintained with the world around them. While much work still needs to be done, the recognition of the rights and leadership of First Nations, Métis and Inuit nations in stewarding their traditional territories has changed for the better over the last sixty years.

As part of our efforts to improve how we engage with Indigenous Peoples and better support Indigenous-led conservation efforts in Canada, NCC is pleased to support the work of the [Conservation through Reconciliation Partnership](#) and the research of the report authors. This work helps all of us to better understand the evolving legal and policy environment regarding the rights of Indigenous Peoples related to the conservation of private land in Canada; furthermore, it helps to identify pathways to meaningful engagement that can lead to respectful and equitable conservation outcomes.

NCC recognizes and respects the many individuals, communities, organizations, and nations that are working to restore and respect relationships with the land and waters all around us, as well as the many perspectives on how we can collectively achieve the positive outcomes we all want to see. We hope that the scholarship of this report can contribute to these collective efforts in ways that continue to recognize the leadership, rights and role of Indigenous Peoples in conservation and maintaining healthy relationships with the land as a whole.

Nathan Cardinal
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Nature Conservancy of Canada

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A photo of a tree-lined stream in the Kumdis Estuary in Haida Gwaii British Columbia. NCC is working in partnership with the Haida Nation to manage and restore a 63-hectare (155-acre) forest in this territory. Gámdas Tlagee holds both ecological and cultural values. The territory sustains areas of old-growth Sitka spruce and western red-cedar. A salmon-bearing stream runs through the land, emptying into the biologically rich Kumdis Estuary. Photo Credit: Haida Laas-Graham Richard.

Introduction

In Canada, land trusts and similar not-for-profit organizations and government agencies have sought to “conserve private lands” for their ecological, agricultural, recreational or scenic value through acquiring “ownership” or other legal interests in land. This process, often termed “securement”, has a long history in Canada, and has created significant public benefits. However, much of this work has occurred without a full appreciation of the complexities and contradictions that arise throughout what is now Canada as a consequence of the unresolved question of Indigenous land rights and the un-reconciled relationship among Indigenous peoples, the Canadian state and Canadian society as a whole. As noted by the Truth and Reconciliation Commission:

For over a century, the central goals of Canada’s Aboriginal policy were to eliminate Aboriginal governments; ignore Aboriginal rights; terminate the Treaties; and, through a process of assimilation, cause Aboriginal peoples to cease to exist as distinct legal, social, cultural, religious, and racial entities in Canada.¹

This report is intended to help readers understand the current state of law and policy concerning what are often still referred to as “Aboriginal rights” within Canadian law, or more appropriately, as “Indigenous rights” in accordance with both Indigenous preferences and international legal conventions, as they apply to the conservation of private lands.

We note at the outset that the terms “private lands” and “conservation” are complicated topics in and of themselves. If the root of the current challenge is the fact that Canada as a nation was built on lands that were already occupied by Indigenous peoples, who were living on their own lands, under their own laws and in their own societies at the time of “discovery” and colonization by Europeans, the branches of that same tree include ideas of “private ownership”, “development” and “conservation”.

¹ Truth and Reconciliation Commission. (2015). *Honouring the Truth, Reconciling for the Future: Summary of the Final Report*. Ottawa: Truth and Reconciliation Commission. www.trc.ca/assets/pdf/Honouring_the_Truth_Reconciling_for_the_Future_July_23_2015.pdf Accessed 2021-05-10.

These words and the associated concepts developed in the European context are loaded with both cultural assumptions and legal concepts that are different from how many Indigenous societies understand relationships between people and the land. When these terms are used together to describe the practice of “private land conservation”, we are into territory that is not only profoundly foreign to many Indigenous conceptions of what constitutes a proper relationship between individuals, communities and the land as a whole, but is deeply connected to a history of dispossession and displacement of Indigenous peoples through Euro-Canadian colonization and settlement, and the transformation of the lands they still call home through private ownership, industrial and agricultural development, and urbanization.

We also note our own relationship to this topic. None of the authors or contributors to this report are Indigenous, but we understand that, as settlers from different parts of what is now Canada, we are the beneficiaries of historic treaties which allowed our ancestors to live under the peace and protection of Indigenous allies at a time when Canada was a much more tenuous idea than it is today. We seek to honour those Treaty relationships and to contribute to reconciliation by demonstrating how important respecting Indigenous rights is for conservation practice.

We have also studied, worked and taught at the intersections of Indigenous rights, conservation and property law for many years, and our perspectives have been shaped by our work with leaders in both the Indigenous and conservation communities. While we are objectively critical of certain failures of conservationists to engage with Indigenous peoples in a manner that respects and affirms Indigenous rights, we are also advocates for positive change and strong advocates for conservation. This report – and our critique of both historical and current approaches to conservation – is directed towards creating an understanding of the nature of the problem in order to inform better practices and build better relationships between settler and Indigenous societies in what is now Canada, and to contribute to a more ecologically and culturally inclusive form of conservation practice.

Until recently, the dominant ideas about conservation in Canada excluded people from land. Thanks to both a better understanding of ecological relationships and the influences of both Indigenous and Western thinkers, conservation is now recognizing that we must situate human beings as part of the natural world, with unique responsibilities to act not only in the present, but to consider the rights and interests of other beings and future generations in an increasingly urgent manner, as the systems that support all life begin to buckle under the strains of the climate crisis, biodiversity losses, global pollution and other unprecedented human pressures.

Conservation is accordingly more important than ever – and private land conservation plays an important role. We believe that the individuals and organizations who are engaged in this important work in Canada have a responsibility to reconcile the history and current approach to private land conservation with Indigenous people in a way that is transformative. We must all approach this work “in a good way”.

The Context of Private Land Conservation in Canada

Private land conservation efforts in Canada emerged in the early 1900s, initiated by wealthy individuals, hunting and service clubs, and then natural history organizations; the latter included groups such as Bird Protection Quebec / Protection des oiseaux du Québec (1917), Federation of Ontario Naturalists (1931) and Ducks Unlimited Canada (1938).

Since the early 1960s, off-shoots and new organizations were established to focus on land securement, inspired by the growing land trust movements in the United States and United Kingdom. For example, the Federation of Ontario Naturalists' Nature Reserves committee spawned the Nature Conservancy of Canada in 1962 and the Ontario Land Trust Alliance in 1997. Other significant land trust milestones were the creation of PEI's Island Nature Trust (1979) and the Nova Scotia Nature Trust (1994); Québec's Réseau de milieux naturels protégés (1993). In the West, the emergence in B.C. of the Cowichan, Nanaimo and Salt Spring land trusts emerged in 1995, followed by the Land Trust Alliance of British Columbia (1997), and the Southern Alberta Land Trust Society in 1998. Many of these organizations participated in the Canadian Land Trust Alliance, established in 2006.

The establishment of the Québec and federal Ecological Gifts Programs in 1994-95, streamlined cross-border transactions with the U.S. (2010), and provincial and federal land acquisition funds and incentives have supported private land conservation by land trusts.

As these organizations and their activities emerged, their actions have had impacts, sometimes significant, on Indigenous communities and their rights. Private lands usually preclude unauthorized access; "conservation" is often equated with preservation in a Western construct that excludes most people, uses and maintaining responsibilities and relationships with the land and waters; and rights such as harvesting are pre-empted. Today, Indigenous and ally communities and the courts alike are calling for more engagement, consultation and accommodation of Indigenous interests.

The land trust and conservation movements are beginning to perceive, understand and address these issues. Initiated from within these movements, this seeks to enhance understandings and responses of conservation organizations to both their legal and ethical responsibilities in relationship with Indigenous peoples.

Private land conservation frequently involves a number of activities that intersect with public governments. This often occurs through advocacy and participation in public land use decisions, where conservation NGOs work to influence the frameworks, factors, plans, and on-the-ground practices that lead to government action to establish parks, conservation lands and other forms of protected area. Many private conservation organizations also engage in land stewardship and management on lands which they do not own, whether occasionally (e.g., planting trees or maintaining trails) or through more extensive agreements for joint management with public or private owners, including through species and habitat stewardship or restoration, research and monitoring, public education, and other related activities.

More directly, many private conservation organizations are also active in “securement”, in which they obtain a legal interest in lands for conservation purposes, including habitat or heritage protection, public education, recreation, and other purposes. In this context, land trusts and other conservation organizations are directly involved in securing property rights to those lands, and often interact with public (or “Crown”) governments in Canada.

Why Indigenous Rights Matter for Private Conservation

This report provides context and guidance for non-governmental conservation organizations (NGOs) working to conserve private lands in Canada regarding the rights of Indigenous peoples, and the nature and extent of these organizations’ legal and ethical obligations to potentially affected Indigenous peoples when acquiring or managing private lands for conservation.

From an Indigenous perspective, there has been little to distinguish between public and private land conservation. Whether the lands were designated as national or provincial parks by public governments or acquired and managed as private conservation preserves by individuals or groups, the outcome has been the same: the dispossession of Indigenous peoples from their lands, the denial of their rights, and the interference with their ways of life.

For more than a century, conservation in Canada has been synonymous with the dispossession of Indigenous land or the restriction of Indigenous rights in the name of protecting wildlife or scenic places.² Until recently, Crown legislation and authority was used coercively to force Indigenous peoples off of their lands and undermine their traditional stewardship and governance roles over those places.³

Private land acquisitions have had similar effect. For all of the many benefits that the conservation movement has brought, many conservationists are only now beginning to confront the reality that all of Canada is Indigenous land, and that many of Canada’s greatest conservation achievements have been built on a shameful legacy of exclusion and indifference to that fact.

Some of Canada is subject to modern treaties, negotiated over the nearly half a century since the Supreme Court uncomfortably acknowledged in the 1973 *Calder*⁴ decision that Aboriginal title continued to exist in Canada. This flowed from the fact that Indigenous peoples were here, living on their own lands and under their own laws prior

² Zurba, Melanie et al. (2019). “Indigenous Protected and Conserved Areas (IPCAs), Aichi Target 11 and Canada’s Pathway to Target 1: Focusing Conservation on Reconciliation.” *Land* 10, 8 (1) at 3. <http://dx.doi.org/10.3390/land8010010>

³ See, *inter alia*: Sandlos, J. (2007). *Hunters at the margin: Native people and wildlife conservation in the Northwest Territories*. Vancouver: UBC Press; Sandlos, J. (2008) “Not wanted in the boundary: The expulsion of the Keeseekoowenin Ojibway Band from Riding Mountain National Park”. *The Canadian Historical Review*, 89 (2), 189-221.

⁴ *Calder et al. v. Attorney-General of British Columbia*, 1973 CanLII 4 (SCC), [1973] SCR 313, <<https://canlii.ca/t/1nfn4>>, retrieved on 2021-04-18 [“*Calder*”].

to the assertion of European sovereignty. In much of the rest of the country, the situation remains legally uncertain.

From a historical perspective, there is no doubt that respect for Indigenous nations and Indigenous laws was fundamental not only to the formation of the first pre-Confederation treaties, but that respectful relations with Indigenous allies was necessary to permit European settlements and trading relationships to be established in what is now Canada.⁵

The earliest historic treaties in the Maritimes were clearly treaties of “peace and friendship” in which both the Indigenous and non-Indigenous settlers agreed to mutually benefit from protection and trade relations. Conflicts between European nations in the early colonies were often decided by Indigenous allies, including the War of 1812, in which the Six Nations were instrumental to the successful defense of Canada.⁶

But as noted Anishinaabe legal scholar John Borrows observes, as the balance of power shifted with the influx of new settlers in the 19th and 20th centuries, the colonial approach of the newly-established Government of Canada and many of the provinces interpreted historic treaties in a one-sided manner, justifying the “taking up” of lands by the Crown for settlement, resource extraction, and other purposes at the expense of the Indigenous parties—all without an adequate legal foundation:

Given the absence of agreement on the largely unforeseen effects of subsequent settler development on treaty lands, it is not clear why treaties should be construed in a way that decreases Aboriginal rights for the benefit of the Crown.⁷

However, a significant shift is underway. Until 1982, the dominant direction of Crown governments and the Canadian courts was to deny or diminish Indigenous lands and Indigenous rights. Many of the foundational decisions and policies from both governments and the courts relied on discredited concepts such as the Doctrine of Discovery and *terra nullius* to justify European sovereignty over Indigenous peoples and lands.⁸ Many of these were decided in prosecutions for fish or wildlife infractions, with constrained procedures and evidence to address more fundamental Indigenous rights issues.

But after decades of activism, negotiation and litigation by Indigenous peoples, law and policy reached an important crossroads in 1982 when Aboriginal and treaty rights were enshrined in section 35 of Canada’s

⁵ Slattery, Brian (1987). Understanding Aboriginal Rights. *Canadian Bar Review*, 66 (4), 727-783

⁶ Benn, Carl. (1998). *Iroquois in the War of 1812*. Toronto: University of Toronto Press.

⁷ Borrows, John. (2001). “Domesticating Doctrines: Aboriginal Peoples after the Royal Commission”, 2001 46-3 *McGill Law Journal* 615 CanLII Docs 49, <<https://canlii.ca/t/2bb9>>, retrieved on 2021-04-18.

⁸ Truth and Reconciliation Commission, Calls to Action. (2012). Action 45(1) calls on the Government of Canada to ‘repudiate concepts used to justify European sovereignty over Indigenous lands and peoples such as the Doctrine of Discovery and *terra nullius*.’

constitution.⁹ Subsequent to constitutional recognition of the priority of the “Aboriginal” rights of First Nations, Inuit and Métis, Crown governments and Canadian courts are increasingly extending recognition to Indigenous laws and governance systems in a wide range of areas, including the inherent right of self-government.

These shifts are accelerating with legislation implementing the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), now in force federally¹⁰ and in British Columbia.¹¹ UNDRIP recognizes the right of Indigenous peoples to determine how their territories and resources are used to “enable Indigenous Peoples to maintain and strengthen their institutions, cultures and traditions, and to promote development in accordance with their aspirations and needs.”¹² UNDRIP also expressly requires states like Canada to:

“... consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.”¹³

Canada’s courts are also uncomfortably confronting both the historical and contemporary issues that must be addressed to reconcile Canada’s present constitutional realities with our colonial history. A great deal of land—including some of Canada’s largest cities and most valuable real estate—has been acquired under circumstances which would be legally impossible or morally outrageous today.

The land question also implicates private land conservation in Canada and situates private land conservation organizations who hold or acquire lands subject to Aboriginal rights and title in an often-uncomfortable position between Indigenous peoples and Crown governments. However well-intentioned the acquisition, management and protection of important natural areas and habitat may have been, conservation NGOs in Canada – and Canadians themselves—are recognizing the pressing need to reconcile the past and the present-day consequences of what is indisputably a history of denial and dispossession of Indigenous peoples from their lands and cultures.

⁹ *Constitution Act, 1982*. S. 35(1) states that Existing Aboriginal and treaty rights are hereby respected and affirmed. https://laws-lois.justice.gc.ca/eng/const/const_index.html retrieved 2021-04-18.

¹⁰ C-15, An Act respecting the *United Nations Declaration on the Rights of Indigenous Peoples*. <https://www.parl.ca/LegisInfo/BillDetails.aspx?language=E&billid=11007812>

¹¹ Declaration on the Rights of Indigenous Peoples Act, SBC 2019, c 44, <https://canlii.ca/t/544c3> retrieved 2021-04-18.

¹² United Nations. *United Nations Declaration on the Rights of Indigenous Peoples*. (2007). GA Res 61/295, UNGAOR, 61st Sess, Supp No 53, UN Doc A/61/53 (“UNDRIP”).

¹³ UNDRIP Art 32.

The past is prologue to the next chapter of the relationship between private conservation and Indigenous peoples. As noted by the Nature Conservancy of Canada, “the dynamic of conservation in Canada is changing...It is a time of shifting paradigms.”¹⁴

The Truth and Reconciliation Commission’s Final Report characterized reconciliation as “establishing and maintaining a mutually respectful relationship between Aboriginal and non-Aboriginal peoples in this country.” Achieving this requires “awareness of the past, acknowledgment of the harm that has been inflicted, atonement for the causes, and action to change behaviour.”¹⁵ This holds true for conservation. The work of the Indigenous Circle of Experts, established to advise federal, provincial and territorial governments on meeting protected area targets, has brought broader attention to the colonial legacy of Canada’s approaches to conservation, and set out an agenda for reconciliation.

There is already clear evidence that positive changes are occurring. Public governments are engaging with Indigenous peoples as partners and co-managers in establishing new protected areas on traditional lands, with a number of new designations expressly recognizing Indigenous jurisdictions and authorities within Indigenous Protected and Conserved Areas. There is also a major shift in how such areas are viewed: rather than being “protected from” Indigenous people¹⁶, there is now a recognition that such areas must be “protected for” the continued practice of Indigenous harvesting and land management activities.¹⁷

Over the decades to come, Indigenous peoples will determine for themselves whether, how and where future conservation initiatives will occur on their lands.¹⁸ Indigenous peoples will also determine for themselves who they will choose to work with to achieve their goals. Globally, there is strong evidence for the correlation between Indigenous management and effective conservation outcomes, in contrast to the rapidly diminishing effectiveness of conventional approaches to species and habitat protection.¹⁹

There is also growing evidence that parks and other public protected areas alone have been insufficient to sustain global biodiversity, and more effective protection and management, including on private lands, will be among the

¹⁴ Nature Conservancy of Canada. (September 2019). *Walking Together to Care for Land and Water: Indigenous Conservation Engagement Framework*, at 1. <https://www.natureconservancy.ca/assets/documents/nat/Walking-Together-NCC-Indigenous-Conservation-Engagement-Framework.pdf> retrieved on 2021-04-18.

¹⁵ Truth and Reconciliation Commission of Canada. (2015). *Canada's Residential Schools: Reconciliation: The Final Report of the Truth and Reconciliation Commission of Canada, Volume 6*. McGill-Queen's University Press at 6-7.

¹⁶ Cronon, W. (1996). The trouble with wilderness. *Environmental History* 1 (1), 7-28.

¹⁷ Hodgins, B., & Cannon, K. (1998). The Aboriginal presence in Ontario parks and other protected places In B. W. Hodgins & J. S. Marsh (Eds.), *Changing parks: The history, future and cultural context of parks and heritage landscapes* (pp. 50-76). Toronto: Dundurn.

¹⁸ Indigenous perspectives on conservation are by no means uniform, and many Indigenous communities will self-determine to pursue a diversity of opportunities and alternatives on their lands, including resource extraction and other forms of economic development.

¹⁹ Media Release: Nature's Dangerous Decline 'Unprecedented,' Species Extinction Rates 'Accelerating.' *Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services* <https://www.ipbes.net/news/Media-Release-Global-Assessment> retrieved 2021-04-18.

transformative changes needed to restore and protect nature, species and communities. As noted by the International Union for Conservation of Nature (IUCN):

“working with [I]ndigenous peoples in protected areas is no longer a question of “doing good”, but doing things right.”²⁰

Private land conservation organizations in Canada can play a significant role in bringing about these changes and can become effective partners and allies of Indigenous peoples. The private land conservation community in Canada has a unique opportunity to become a leader in inclusive, rights-based recognition of the role of Indigenous peoples in local and global conservation.²¹ But such changes will only come about if there is a full recognition of the scope of the work that must be done, and a willingness on the part of private land conservation organizations and practitioners to recognize that responsibilities for reconciliation through conservation extend beyond simply meeting legal obligations. These responsibilities must widen to adopting and implementing a range of best practices that will create stronger, more resilient and more effective conservation partnerships, and secure important conservation outcomes.

In 2015, Canadian federal, provincial, and territorial governments developed 19 biodiversity targets for Canada in order to meet its international commitments to the Strategic Plan for Biodiversity, adopted in 2010 at the Conference for the Parties for the Convention on Biological Diversity (CBD) in Nagoya, Aichi Prefecture Japan.²² Canada Target 1 states:

“by 2020, at least 17% of terrestrial areas and inland water, and 10% of marine areas, are conserved through networks of Protected Areas and other effective area-based conservation measures.”²³

Canada’s commitments to meeting the Aichi Targets, and in particular, the inclusion of “other effective area-based conservation measures” (OECMs) as well as Indigenous Protected and Conserved Areas within the suite of “Pathways to Target 1”, has created new opportunities to significantly expand the scope of private conservation

²⁰ Larsen, Peter Bille. (2006). Reconciling indigenous peoples and protected areas: rights, governance, and equitable cost and benefit sharing. Gland: IUCN at 2.

²¹ Kamal, Sristi; Małgorzata Grodzińska-Jurczak & Gregory Brown. (2015). Conservation on Private Land: A Review of Global Strategies with a Proposed Classification System. *Journal of Environmental Planning and Management* 58 (4) 576-597 at 576.

²² The Indigenous Circle of Experts. (March 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 at 19.

https://static1.squarespace.com/static/57e007452e69cf9a7af0a033/t/5ab94aca6d2a7338ecb1d05e/1522092766605/PA234-ICE_Report_2018_Mar_22_web.pdf; United Nations Environment Programme (UNEP) Conference of the Parties (COP) to the UN Convention on Biological Diversity (CBD). (2010). Decision Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Tenth Meeting. Convention on Biological Diversity. <https://www.cbd.int/doc/decisions/cop-10/cop-10-dec-02-en.doc>

²³ Biodivcanada. (2016). 2020 Biodiversity Goals & Targets for Canada.

<https://biodivcanada.chm-cbd.net/2020-biodiversity-goals-and-targets-canada>

efforts. In turn, it has accelerated the urgency for NGOs to understand the landscape of legal obligations to potentially affected Indigenous peoples when acquiring or managing private lands for conservation.

Intersections between Private Conservation and Crown Government

From a strictly legal perspective, it is the nexus between the activities of private conservation organizations and public governments that is significant. Some specific areas of intersecting private conservation activities and public government action include:

Federal Government:

- Incorporation of the organization as a separate legal entity for specified purposes under federal legislation (typically under the *Canada Not-For-Profit Corporations Act*);
- Registration as a charity to be able to issue tax receipts for gifts of land, money or other items, and to not have to pay income tax under the *Income Tax Act*;
- Participation in government tax incentives, such as the Ecological Gifts Program, which includes certification of the organization as a qualified program “recipient”, acceptance of a land gift as qualifying under national or regional criteria as “ecologically sensitive”, and independent review and approval of the value of a donated property or interest under the *Income Tax Act*; and
- Federal funding.

Provincial and Territorial Governments:

- Incorporation of the organization as a separate legal entity or creation of a trust for specified purposes (provincial not-for-profit corporations, societies, trusts or special legislation);
- Oversight of charity and charitable property (i.e., under the Ontario *Charities Accounting Act* or other provincial/territorial legislation);
- Land law and procedures, including the eligibility, purposes, procedures and other legal parameters of conservation easement, covenant, and related agreements under land titles and conservation easement agreement legislation;
- Property tax classifications, property valuations, tax reduction or exemptions programs, and related procedures under property tax or assessment legislation;
- Participation in taxation and transaction fee measures and criteria, such as for transferring land title or for obtaining land use planning approvals for land subdivision or conservation easement agreements, and the like; and,
- Provincial or territorial funding programs.

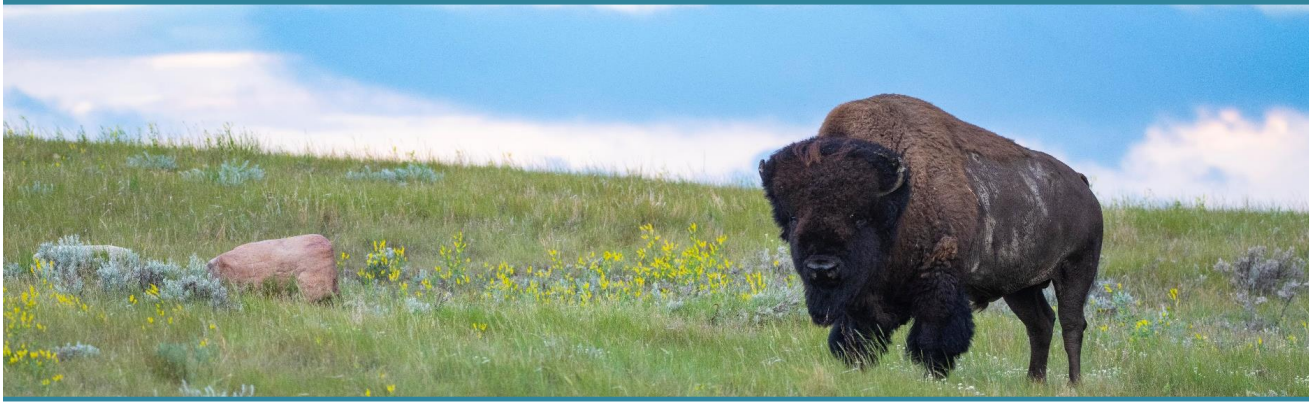
In this, we are particularly concerned with the context of land securement activities where the planning, funding, acquiring and managing of legal interests in land for conservation purposes is involved.

Five Key Themes in this Report

In exploring how private land conservation and land securement activities affect relationships with Indigenous peoples, this report focuses on five major themes. These themes are of particular importance for conservation organizations seeking to understand the legal and policy landscape that underlies and structures key relationships with Indigenous communities in Canada.

- 1. Canadian constitutional law relating to Aboriginal rights under s. 35 of the Constitution Act, 1982, particularly the obligations placed on Crown governments through ongoing judicial interpretations of the “duty to consult and accommodate” and to maintain the “Honour of the Crown” in dealings with Indigenous Peoples;**
- 2. Contract law for Crown programs, where federal, provincial and territorial governments’ programs and duties require actions through contracts or agreements for funding and related programs;**
- 3. International law and policy, especially in relation to biodiversity, protected areas and Indigenous peoples;**
- 4. Standards and best practices for relationships with Indigenous peoples in the conservation sector; and**
- 5. Going beyond consultation by respecting Indigenous jurisdiction and governance.**

These themes organize the structure of this report, and each provide a basis for informing the understanding and approach to private land conservation practice in a way that is respectful of Indigenous rights.



Many Indigenous communities are now taking action to restore bison across the prairies. This photo is of a captive herd of plains bison that the Nature Conservancy of Canada (NCC) manages at Old Man on His Back Prairie and Heritage Conservation Area in Saskatchewan. NCC has been working with different First Nations advisors from local nations to develop a management plan for the herd. Photo Credit: Jason Bantle.

Section 1: A Matter of Respect

Understanding the “Duty to Consult and Accommodate”

The “duty to consult and accommodate” is the starting place for much of the jurisprudence developed by the Supreme Court of Canada (SCC) and the common law obligations on Crown governments that flow from s. 35 of the *Constitution Act 1982*. Beginning in 1990 with *R v Sparrow*,²⁴ the SCC has successively reaffirmed and refined the parameters of this common law duty in many of its leading cases.

It is important at the outset to note that the development of the common law duty to consult and accommodate as a legal doctrine in Canada preceded or paralleled the articulation of the related international concept of free, prior and informed consent (“FPIC”). While the discussion that follows reflects the state of the law as this report was written, the law continues to evolve and will undoubtedly be informed by UNDRIP and the shifts Canada, BC and other jurisdictions are initiating through legislative and policy changes.

Recall that the purpose of s. 35(1) is to “recognize and affirm” the existing rights of Indigenous peoples who were here prior to Europeans and other immigrants. The SCC has also positioned this duty as part of a larger set of constitutional obligations based on the principle of the “Honour of the Crown”. This grounds the duty to consult and requires these rights to be determined, recognized, and respected as a remedial response to the imbalance of power between governments and Indigenous peoples that has existed over more than a century of colonization and dispossession.²⁵

²⁴ *R v Sparrow* [1990] 1 SCR 1075 [“Sparrow”]

²⁵ *Haida Nation v British Columbia (Minister of Forests)* [2004] 3 SCR 511 [“Haida”] at paras. 16, 25, 32; see also Newman, Dwight, G. (2014). *Revisiting the Duty to Consult Aboriginal Peoples*. Saskatoon: Purich Publishing Ltd. at 15.

The threshold for triggering the duty to consult is low and occurs when the Crown has real or constructive knowledge of the potential existence of Aboriginal or treaty rights (including title) and contemplates conduct that might adversely affect that right.²⁶ Actual knowledge arises with the potential impact of a treaty right or a claim filed in court or advanced in the context of negotiations²⁷, and constructive knowledge arises where lands are known or reasonably suspected to have been occupied by an Aboriginal community or an impact on rights may reasonably be anticipated.²⁸ The SCC has repeatedly asserted that the adverse impact in question is not limited to an immediate effect on land or resources, but must be considered in the context of the historical and contemporary uses of those lands and resources by the Indigenous group.²⁹

Haida Nation is a leading case on the duty to consult. In *Haida Nation*, the Court held that the duty is proportionate to the strength of the claim for the Aboriginal right and the seriousness of potential adverse effects to that right that would result from the Crown's actions.³⁰ In cases where the claim is weak or the adverse impact is deemed minimal, mere notification may be sufficient to fulfill the Crown's duty to consult.³¹ Conversely, in cases where both the claim and potentially adverse effects are strong, particularly where there is a high risk of damage that cannot be compensated by money, the Crown must undertake deep consultation.³² This extends beyond merely receiving the concerns of an Indigenous group, and requires engagement in "meaningful two-way dialogue."³³ To ensure it is effective, consultation should take place at the earliest stages of a project, before irrevocable steps have been taken.³⁴

It is important to note that the SCC held in *Haida Nation* that, because the duty to consult "flows from the Crown's assumption of sovereignty over lands and resources formerly held by the Aboriginal group", there is no similar obligation imposed on third parties (such as non-governmental organizations) to engage in consultation or accommodation.³⁵

²⁶ *Haida* at para. 35; *Taku River Tlingit First Nation v British Columbia (Project Assessment Director)*, [2004] 3 SCR 550 ["*Taku River*"] at para 25; *Clyde River (Hamlet) v Petroleum Geo-Services Inc*, [2017] 1 SCR 1069 ["*Clyde River*"] at para 41; *Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)*, [2005] 3 SCR 388 ["*Mikisew*"] at para. 33.

²⁷ *Mikisew* at para. 34

²⁸ *Rio Tinto Alcan Inc v Carrier Sekani Tribal Council*, [2010] 2 SCR 650 ["*Carrier Sekani*"] at para. 40.

²⁹ *Clyde River* at para. 4.

³⁰ *Haida* at para. 39.

³¹ *Haida* at para. 43.

³² *Haida* at para. 44.

³³ *Tsleil-Waututh v Canada (Attorney General)* [2018] FCJ No 876 (FCA) ["*Tsleil-Waututh*"] at para. 558.

³⁴ *Musqueam Indian Band v Richmond (City)* [2005] BCJ No 1636 (BCSC) ["*Musqueam*"] at para. 118.

³⁵ *Haida* at para. 53; see also *Taku River*, and *Clyde River*.

The Duty to Consult and Third Parties

From a strict legal perspective, it is the Crown that remains ultimately responsible for the legal consequences of any failure to consult or accommodate by third parties, including private developers or conservation organizations. Private conservation organizations are not Crown entities and have no free-standing legal obligation to consult with affected Indigenous Peoples. Similarly, the Honour of the Crown cannot be delegated to third parties, even when those third parties are carrying out actions that have been authorized or supported by the government.

However, where a private conservation organization is working under Crown direction, with Crown resources, or seeking Crown authorizations, and where such actions have the potential to adversely impact Aboriginal or treaty rights, there are a wide range of duties and obligations that must continue to be met by the government. Further, certain procedural aspects of those duties can be imposed by the government on third parties, including private conservation organizations.

Accordingly, while the Crown remains ultimately responsible for ensuring consultation undertaken by a delegated third party is sufficient to discharge its duty to consult, a number of Canadian jurisdictions have developed extensive policy or legislative requirements that impose consultation duties directly on third parties.³⁶ Where the Crown delegates responsibilities, the third party must adequately demonstrate that they have fulfilled those responsibilities in order for the Crown to make final decisions.³⁷ However, the Crown may not rely wholly on the delegate's reports or assessments on the completeness of consultation, and must be independently satisfied that the duty has been fulfilled.³⁸ Further, it should be noted that the Crown bears no obligation to delegate any aspect of this duty, and that "a proponent does not have a *right* to take part in consultations between the Crown and a First Nation."³⁹

That said, courts have acknowledged that the delegation of certain aspects of consultation is particularly appropriate when the third party in question is well-placed to mitigate or accommodate the concerns an Indigenous community raises about the potential adverse impacts on its treaty or Aboriginal rights.⁴⁰ This includes decisions respecting land and land management.

It follows that there are a number of circumstances which are likely to arise in the context of private land conservation where the duty to consult is triggered. While discharging the ultimate legal duty to consult and accommodate remains the responsibility of the Crown, the conduct of a private land conservation organization will almost always be a relevant consideration in whether the duty has been adequately discharged.

³⁶ *Yellowknives Dene First Nation v Canada (Attorney General)* [2010] FC No 1412 (FC) ["Yellowknives Dene"] at para. 93; affirmed in 2015 FCA 148.

³⁷ *Eabametoong First Nation v Minister of Northern Development and Mines* 2018 ONSC 4316 ["Eabametoong"].

³⁸ *Squamish Nation v British Columbia (Minister of Community, Sport and Cultural Development)* 2014 BCSC 991; see also *Yellowknives Dene*.

³⁹ *Taseko Mines Limited v Canada (Environment)* 2017 FC 1100 ["Taseko"] at para. 95; affirmed 2019 FCA 320 (emphasis in original).

⁴⁰ See *Fort McKay First Nation v Alberta (Minister of Environment and Sustainable Resource Development)* 2014 ABQB 383; *Eabametoong*

Depending on the jurisdiction, there may also be a number of delegated aspects of the Crown's duty which are assigned directly to the private land conservation organization.

In our assessment, there are at least three principal circumstances where private land conservation is likely to trigger either Crown consultation obligations or require a private conservation organization to carry out delegated procedural duties to consult:

- 1. Purchasing, otherwise acquiring or managing conservation land with government funding or through land donations provided through government incentives**
- 2. Transferring private land from NGOs to the Crown; and**
- 3. Registering interests in the Torrens land titles system.**

The above list is not exhaustive, but each of these circumstances will be described in more detail to illustrate both the basic underlying legal principles, and as a guide to the more general context in which the duty to consult arises.

Purchasing, Acquiring or Managing Conservation Land with Government Funding or Support

The courts have long held that Crown action triggering the duty to consult is not limited to an exercise of statutory powers, and can include "strategic, higher-level decisions" around land and resource management with the potential to impact Aboriginal rights or claims.⁴¹ The courts have recognized that broad Crown objectives and policy decisions may lay the foundation for future decisions that will have a direct adverse impact on lands and resources, leaving many Aboriginal groups with a lost or diminished constitutional right to have their interests considered.⁴²

While most of these decisions have been rendered in the context of litigation over development projects, the law in this context does not distinguish between development and conservation. From a legal perspective, a Crown authorization to allow a development to proceed is no different than a decision to establish a protected area. Both actions must be considered in light of the potential impacts that they may have on underlying Aboriginal and treaty rights.

⁴¹ *Carrier Sekani* supra note 10 at para 44, citing Woodward, Jack (1994 loose-leaf updated 2010, release 4). *Native Law*, vol. 1. Toronto: Carswell, at 5-41.

⁴² *Carrier Sekani* at para. 47.

Courts have increasingly considered Crown funding decisions to fall within the scope of “strategic, higher level” decisions. As a result, Crown policy supporting the acquisition of private land for conservation could give rise to a Crown duty to consult. Further, where the Crown decision is to actively support private land acquisitions with funds, the duty to consult could be triggered through the provision of government grants for conservation projects to NGOs. The Crown could also require that, as part of the terms for such funding, the NGO carry out certain procedural aspects of the duty to consult. Such delegations can arise under generally applicable consultation legislation, policies, or as a contractual condition of the grant or contribution.

A recent decision of the Nova Scotia Court of Appeal (NSCA) describes in detail how Crown funding to private parties can trigger consultation obligations:

In *Pictou Landing First Nation*, the NSCA held the province was required to consult Pictou Landing First Nation before funding a new effluent treatment facility for a pulp mill. The province attempted to characterize the funding decision narrowly, arguing that there was no duty to consult because a decision around funding would not in itself have an adverse impact on Aboriginal or treaty rights. The NSCA rejected this argument, finding that the funding agreement was inextricably connected with other interdependent factors, such that, absent the government funding, there was no evidence the facility would otherwise be built. Further, the NSCA noted that the provision of funding would increase the likelihood of ministerial approvals for the pulp mill’s continued operation, as the Minister may conclude that these provincial funds would be wasted if ministerial approval were not granted.⁴³

The NSCA was careful to note that the facts in this case did not support a finding that funding is a freestanding basis for consultation, but it did note that question may be an issue for a future consideration. However, this decision is notable in that it situates Crown funding as a key factor in bringing what are otherwise private actions within the ambit of public duties to consult and accommodate.

This has clear implications for private conservation acquisition and management activities that involve government funding.

If the acquisitions are within the scope of a broad “strategic or higher level” Crown objective and would not otherwise occur but for the provision of government funds, it is very likely that the duty to consult will be triggered. This will be the case even if there is some degree of consultation that may have occurred at the national level (as with the Canada Nature Fund) since the analysis of potential impacts on Aboriginal and treaty rights must be considered contextually and applied in relations to the specific rights that are affected. Where such consultation is triggered, Crown consultations with locally affected Indigenous groups will be required. In such circumstances, certain aspects of consultation may be delegated to NGOs, just as they are delegated to developers.

⁴³ *Nova Scotia (Aboriginal Affairs) v Pictou Landing First Nation*, 2019 NSCA 75 [“Pictou Landing”] at paras. 134-138.

We note that consultation stemming from Crown funding is not a generalized obligation for all funding decisions. This “broader theory” of consultation was rejected in *Rio Tinto Alcan Inc v Carrier Sekani*, where the SCC did not accept that individual government actions or decisions that do not directly affect Aboriginal and treaty rights should trigger consultation obligations simply because they are part of a larger government action that might otherwise trigger the duty to consult.⁴⁴ The SCC has maintained that the question must instead be whether the current government action in providing funding will adversely impact a right, as opposed to setting the stage for further decisions which may adversely impact that right.⁴⁵ There must be a causal relationship between the proposed government conduct—the provision of funding—and the potential for adverse impacts on Aboriginal claims or rights.⁴⁶

Given the analysis above, potential Crown consultation obligations may arise in relation to conservation actions taken with support from the following federal funding programs:

- ◆ **The Canada Nature Fund** (CNF) is available to not-for-profits, Indigenous organizations, provinces, and territories. The fund consists of \$500 million to be spent between 2018 and 2023 with the goal of protecting the environment by providing support for preserving species at risk and establishing protected areas.
- ◆ **The Natural Heritage Conservation Program** (NHCP) is a public-private partnership with the purpose of advancing privately protected areas in Canada. Launched as part of the 2018 federal budget, the Government of Canada is investing \$100 million over four years, from April 1, 2019, to March 31, 2023, in private conservation initiatives.⁴⁷ The NHCP replaces the **Natural Areas Conservation Program** (NACP) that operated from 2007 to 2019, under which national and local land trusts conserved more than 450,000 hectares of land. This was accomplished through leveraging federal funds for land purchases and donations, and thus would be in a similar position as other federal funding programs.⁴⁸
- ◆ **The Lands Trust Conservation Fund** is a component of the NHCP and will provide \$4.5 million in federal funding, annually until 2023, to support Canadian Land Trusts in securing private lands and private interests in lands.⁴⁹ This initiative was designed to help achieve Canada Target 1 under the UN Convention on Biological Diversity, and land funded under NHCP-Land Trust Conservation Fund Program must count towards Target 1 objectives for permanent or long-term conservation. Available grants range

⁴⁴ *Carrier Sekani* at paras. 52-54.

⁴⁵ *Carrier Sekani* at para. 47.

⁴⁶ *Carrier Sekani* at para. 45.

⁴⁷ House of Commons, Department of Finance. (27 February 2018). *Equality + Growth: A Strong Middle Class*, at 149-150.

⁴⁸ The NACP was led by the Nature Conservancy of Canada, with significant involvement by Ducks Unlimited Canada as well as by local land trusts. For further information, see: [NCC: Natural Areas Conservation Program \(natureconservancy.ca\)](https://www.natureconservancy.ca)

⁴⁹ A Canadian Land Trust is defined as a not-for-profit conservation organization that, as all or part of its mission, actively works to conserve land by acquiring land or Conservation Agreements (or assisting with their acquisition) and/or stewarding/managing land or Conservation Agreements.

(Canadian Land Trust Alliance. (2019). Canadian Land Trust Alliance Standards & Practices at 26).

https://cltstandardspracticesrevision.files.wordpress.com/2019/01/cltsp_2019_en_final.pdf

from \$30,001 to \$100,000 for conservation projects.⁵⁰ In the funding announcement, the Minister of the Environment and Climate Change announced that the NHCP aims to acquire at least 200,000 hectares of private lands and private interests in land to protect habitat and species at risk.⁵¹

- ◆ **The Pathway to Canada Target 1 Challenge** is another funding source centered around meeting Canada's 2020 conservation goals. In August 2019, the Minister of the Environment and Climate Change launched a series of "Challenge" projects, backed by \$175 million to expand protected and conserved areas in Canada.
- ◆ **Habitat Stewardship Program for Species at Risk (HSP)** was established in 2000 as a complement to the regulatory *Species at Risk Act (SARA)*. The HSP provides funds for projects that directly support the recovery and population objectives for species at risk listed under SARA, as well as actions to prevent other species from becoming of conservation concern.⁵² Terrestrial project funds are administered by Environment and Climate Change Canada (ECCC) while Fisheries and Oceans Canada (DFO) manages funds for aquatic projects. Such funds can be important to a conservation organization to assist in managing lands in their care.
- ◆ **Aboriginal Fund for Species at Risk (AFSAR)** recognizes the role of Indigenous Peoples and organizations in wildlife conservation. Initiated in 2004, AFSAR provides funds to build Indigenous capacities for species at risk, Indigenous Traditional Knowledge and assessment of species' risk status, and species prevention, protection and recovery projects.⁵³ As for the HSP program above, terrestrial project funds are managed by ECCC and aquatic projects by DFO.

Similarly, consultation obligations may arise from Provincial and Territorial funding programs, such as:

- ◆ **Nova Scotia Crown Share Land Legacy Trust (Nova Scotia)** was established by the province under the *Environment Act* in 2008, with revenue from Crown share payments used to support the acquisition of ecologically significant and threatened private lands. It is administered by an independent board of Trustees that selects protection projects undertaken by qualified land trusts and other conservation organizations.⁵⁴

⁵⁰ Wildlife Habitat Canada. (2018). *Land Trusts Conservation Fund*. <https://whc.org/ltrcf/>

⁵¹ Ministry of Environment and Climate Change. (2019). *Canada's \$175 million investment in nature kicks off conservation projects in every province and territory*. <https://www.canada.ca/en/environment-climate-change/news/2019/08/canadas-175-million-investment-in-nature-kicks-off-conservation-projects-in-every-province-and-territory.html>

⁵² See Government of Canada. *Habitat Stewardship Program for Species at Risk*. <https://www.canada.ca/en/environment-climate-change/services/environmental-funding/programs/habitat-stewardship-species-at-risk.html>

⁵³ See Government of Canada. *Aboriginal Fund for Species at Risk*. <https://www.canada.ca/en/environment-climate-change/services/environmental-funding/programs/aboriginal-fund-species-risk.html#toc0>

⁵⁴ See Nova Scotia Crown Share Land Legacy Trust. *About the NSCSLLT*. <http://nscslt.biology.dal.ca/>

- ◆ **Greenlands Conservation Partnership** (Ontario) is a \$20 million initiative over four years to “help secure land of ecological importance and promote healthy, natural spaces”. Under way in 2021 and coordinated by the Nature Conservancy of Canada and the Ontario Land Trust Alliance, land trusts will match these funds with other sources to secure, restore and manage important natural lands and provide for healthy recreation, particularly in the southern, more densely settled portion of the province.⁵⁵
- ◆ **Regional securement funds** have been established by regional municipalities. These include the funds established by the Regional Municipalities of Halton, Peel, Durham and York in Ontario, and the Columbia Valley, Kootenay Lake, and South Okanagan Conservation Funds established in BC, among others. These funds are used to match funding from conservation authorities, land trusts and other sources to secure and manage ecologically important lands.⁵⁶ Municipalities are created, and their actions are regulated primarily by provincial governments. In Ontario, conservation authorities are established by municipalities on a watershed basis under specific legislation and direction, including provincial approval of various projects, grants, and the disposition of lands acquired with provincial funds.⁵⁷
- ◆ **Land Trust Grant Program** (Alberta) financially supports ecological land conservation through the securement of new conservation easement agreements or development of new conservation programs on lands held by land trusts that have land conservation as part of their missions.⁵⁸ This program supports some land acquisition, administration, and stewardship expenses, leveraged against other contributions, but does not support the purchase of lands. Established as part of the Alberta Land Stewardship Fund, the program resulted from 2010 changes to the *Public Lands Act* as affected by the *Alberta Land Stewardship Act*.
- ◆ **Fish and Wildlife Compensation Program** (British Columbia) is a partnership between BC Hydro, the Province of British Columbia, Fisheries and Oceans Canada, First Nations and public stakeholders to conserve and enhance fish and wildlife in watersheds impacted by BC Hydro dams.⁵⁹ Through local Boards, the Program reviews and funds various projects to enhance fish and wildlife in three regions of the province.

⁵⁵ See announcement March 2021: <https://news.ontario.ca/en/release/60714/ontario-expanding-the-protection-and-preservation-of-green-spaces>

⁵⁶ For example, see: Region of Peel Greenlands Securement Program <https://peelregion.ca/planning/greenlands/learn-more.htm>; Region of Halton Greenlands Securement Strategy <https://www.halton.ca/The-Region/Regional-Planning/Natural-Heritage>; Durham Region Land Securement Program; York Region Greening Strategy <https://www.york.ca/wps/portal/yorkhome/yorkregion/yr/plansreportsandstrategies/greeningstrategy/>. And see: South Okanagan-Similkameen Conservation Program (2017). *Local Conservation Funds in British Columbia: A Guide for Local Governments and Community Organizations* (2nd ed.). Penticton, B.C.: South Okanagan-Similkameen Conservation Program. <https://soconservationfund.ca/conservation-fund-guide-bc/>

⁵⁷ See *Conservation Authorities Act*, R.S.O. 1990, c. C.27, with provincial approval of projects in sections 24 and 39, among others, and of dispositions in subsection 21 (2).

⁵⁸ See Government of Alberta. *Alberta Land Trust Grant Program*. <https://www.alberta.ca/alberta-land-trust-grant-program.aspx>

⁵⁹ See Fish & Wildlife Compensation Program. *Our Story*. <https://fwcp.ca/our-story/>

- ◆ **Columbia Basin Trust** (British Columbia) was established by the B.C. government under the *Columbia Basin Trust Act*, with its 1997 Columbia Basin Management Plan, to provide a share of the benefits from the Canada-U.S. Columbia Basin Treaty to local communities, including tribal councils and regional districts. The provincial government provided an endowment fund and several years of operational funding, now enabling the Trust to grant funds to communities to support social, economic and environmental well-being.⁶⁰

We note that the above funding programs are typically implemented through agreements between the public government department or agency and a recipient organization. In some cases, an intermediary is involved to administer the program within the funder's parameters.

Given the Crown's responsibilities to uphold the duty to consult, funding agreements are increasingly specifying requirements for recipients to establish relationships with Indigenous Peoples and to engage in consultations. These may include general obligations, such as:

- Providing Indigenous community contacts;
- Requiring review of communications products;
- Coordinating with Indigenous communities;
- Recognition of Indigenous roles and contributions; and
- Reporting on how Indigenous communities were engaged and input was addressed.

Funding agreements can also include detailed guidance and specific requirements. We note that a recent agreement between the British Columbia Wildlife Federation and the Nature Conservancy of Canada requires:

- Documenting efforts to engage and involve First Nations with overlapping traditional territories;
- Ensuring that First Nations understand the project and its environmental benefits;
- Employment and training opportunities for First Nations;
- Summarized project activities and locations shared with First Nations governments;
- Respect for First Nation protocols;
- An obligation to accommodate changes recommended by First Nations communities and engage First Nations technicians;
- Documented partnerships, engagement activities and key progress indicators;
- Decolonization and sensitivity awareness training for participants; and
- Provision of additional or remedial support for First Nations engagement.⁶¹

⁶⁰ See Columbia Basin Trust. *Our Story*. <https://ourtrust.org/about/our-story/>

⁶¹ See British Columbia Wildlife Federation funding agreement with the Nature Conservancy of Canada, 2021.

Donations of Land Title

Related to the purchasing of lands for conservation is the practice of soliciting and receiving donations of lands and partial interests like conservation easement agreements. Often, such donations are made more attractive by government tax incentives, such as income tax benefits for charitable donations generally and enhanced further for donors under the Ecological Gifts Program, as well as reduced or eliminated property tax benefits for conservation organizations.

As for the discussions above of funding and later of title registration, these programs have considerable scope for government discretion in decision making. This may be in terms of the types of transactions and lands that are eligible and the types of donors and organizations that may qualify, whether elaborated in legislation such as the federal *Income Tax Act* or in strategic program documents, such as in Cabinet decisions or implementation policies. Further, Crown governments may exercise discretion in their specific review of applications at each step in a program's operations. In the donation context, First Nations and their agencies are not considered registered charities themselves but must apply separately to become recognized as a "public body performing a function of government in Canada". They thus become a "qualified donee", a tax status essentially equivalent to that of a charity that may (or may not) qualify for land securement and donation purposes under provincial or territorial programs.

Private Management Agreements with the Crown

A number of Canadian jurisdictions allow private lands to be designated and managed as part of an officially sanctioned and supported system of conservation lands. Such designations permit governments to designate private lands as wildlife areas, nature reserves or other types of protected area by agreement with a private landowner. Legislation often prescribes conditions that must be met for such private lands to be recognized as part of the official conservation network. For example, the Quebec *Natural Heritage Conservation Act* requires the nature reserve to offer perpetual protection of a term not less than 25 years and specifies certain conservation measures with which the landowner must comply.⁶²

Legislation also provides opportunity for the government to co-manage the protected area with the private landowner or NGO to advance conservation goals set out in the legislation. The Abraham Lake Nature Reserve, an old-growth forest site, is an example of this practice; although privately owned by the Nature Conservancy of Canada, it is jointly managed with the Province of Nova Scotia and designated a provincial nature reserve under the *Special Places Protection Act*.⁶³

⁶² Natural Heritage Conservation Act, CQLR, c. C-61.01 s 54.

⁶³ NS Reg 141-2006, *Abraham Lake Nature Reserve Ecological Site Designation* s 14 c 438. <https://novascotia.ca/just/regulations/regs/sppalnat.htm>; Nature Conservancy of Canada. *Abraham Lake*. <https://www.natureconservancy.ca/en/where-we-work/nova-scotia/featured-projects/abraham-lake.html>; Nova Scotia. *Abraham Lake Nature Reserve*. https://www.novascotia.ca/nse/protectedareas/nr_abrahamlake.asp

Such designations are clearly examples of Crown action and would be expected to give rise to the duty to consult. Such duties would be proportionate to the level of impact on any underlying Aboriginal or treaty rights, and would be deeper in circumstances where these jointly managed or designated properties operate to restrict access to the protected site using legislative authority.

The Panuke Lake Nature Reserve in Nova Scotia is one such example: designated a nature reserve under the *Special Places Protection Act*, the area protects old-growth hemlock and spruce. Due to the rarity of this forest type in Nova Scotia, access to the reserve requires permission from the private landowner Bowater Mersey Paper Company Ltd., and the Nova Scotia Environment and Labour, Protected Areas Branch.⁶⁴ Although not yet considered by Canadian courts, such designations are clearly government action, and where an Indigenous party can reasonably assert that there is an impact on the exercise of an Aboriginal or Treaty right, the Crown involvement in such designations and management regimes make it likely that consultation and accommodation will be required.

The role of conservation NGOs in such circumstances is likely to be similar to that of a developer, and attract both delegated procedural responsibilities for consultation, as well as being subject to such accommodation measures as the Crown (or the courts) determine are required to uphold constitutional responsibilities.

Legislation that allows provincial or territorial governments to designate protected areas or nature reserves, or enter into agreements with private landowners for the protection of natural areas includes but is not limited to:

Jurisdiction	Legislation
Nova Scotia	<i>Conservation Easements Act</i> , S.N.S. 2001, c. 28 <i>Special Places Protection Act</i> , R.S.N.S. 1989, c. 438 <i>Wilderness Areas Protection Act</i> , S.N.S. 1998, c. 27
PEI	<i>Natural Areas Protection Act</i> , R.S.P.E.I. 1988, c. N-2
Manitoba	<i>Conservation Agreements Act</i> , C.C.S.M. c. C173
New Brunswick	<i>Protected Natural Areas Act</i> , S.N.B. 2003, c. P-19.01
Quebec	<i>Natural Heritage Conservation Act</i> , C.Q.L.R., c. C-61.01
Northwest Territories	<i>Protected Areas Act</i> , S.N.W.T. 2019 c. 11

⁶⁴ RSNS 1989 c 438.

Transfers of Land to the Crown

Many Canadian land trusts and NGOs are also engaged in “pre-acquisition”, in which one NGO acquires an interest in property from a private owner, and then transfers that interest to another public or private owner for long-term management.⁶⁵ The principal advantage to this strategy is that it enables securement to be timely and sometimes less costly (compared to Crown processes) and, following transfer to the entity that will do the long-term management, relieves the NGO who ‘pre-acquired’ the property from bearing ongoing management costs. The strategy also enables the management organization to focus on management, rather than securement.⁶⁶

However, in circumstances where a Crown government or agency is the ultimate recipient of the property, the Crown’s decision to accept those lands will give rise to a duty to consult. For example, private lands acquired by the Nature Conservancy of Canada have been transferred to the federal government to be incorporated within the national parks system.⁶⁷ Given the state of the law, there is no doubt that the federal government and Parks Canada as a Crown agency would be required to fulfill the duty to consult with potentially impacted First Nations to the extent that the transfer and subsequent management of lands by the Crown could affect either potential or established Aboriginal or treaty rights protected under s. 35.⁶⁸ Given that Crown obligation, NGOs engaged in pre-acquisition should be mindful of Indigenous interests at the outset, and assume that consultation and accommodation obligations will need to be fulfilled prior to the transfer occurring.

Registration of Land Title

All privately-owned real property in Canada is registered in one of two major systems: the registry system (deed registration) or the land titles (or Torrens) system. These systems vary by province and territory, as each provincial and territorial jurisdiction administers one or both systems. Canada maintains a separate registry of lands and interests in Nunavut and on Indian reserves. Elsewhere, federal land is registered within the applicable provincial or territorial land title system.

The registration of interests to land potentially gives rise to consultation obligations when title to land is registered by a public government within a land registry using the Torrens system.

Deed registration (which operates exclusively in Prince Edward Island and Newfoundland and Labrador) only requires interests to be registered in a government-maintained register but provides no government guarantee of the validity of such interests. In contrast, the Torrens system, which operates in most other jurisdictions, provides

⁶⁵ Merenlender, A.M. et al. (2004). Land Trusts and Conservation Easements: Who Is Conserving What for Whom? *Conservation Biology*. 18(1) 65–75 at 68.

⁶⁶ Merenlender, A.M. at 69.

⁶⁷ Jamie Benidickson. (2009). Legal Framework for Protected Areas: Canada. *IUCN-EPLP* No 81 at para 32; see also Yang, Sophia. (15 July 2016). Partners in Conservation: The Nature Conservancy of Canada and Parks Canada. *Landlines: The Nature Conservancy of Canada Blog*. <https://www.natureconservancy.ca/en/blog/archive/nature-conservancy-of-canada.html>

⁶⁸ Mikisew.

not only an updated account of all interests in the land – ownership, mortgages, easements, covenants, rights-of-way, certificates of pending litigation, leases – but guarantees that such interests are valid once they have been accepted, examined and registered by the land titles office. Once registered under the Torrens system, an interest holder has an indefeasible interest guaranteed by the Crown against all other interests in the land, subject to a limited list of specified exceptions including fraud (but not Indigenous or treaty rights).⁶⁹

The cornerstones of the Torrens system are the “mirror and curtain” principles; the register is deemed to perfectly “mirror” title, reflecting all information and interests related to the registered land titles. From the point in time of registration, a “curtain” is drawn over any past errors, meaning that a party is not required to make any inquiries behind the registered title; the land titles office, and by extension, the Crown, will guarantee the validity of that title against all other interests.

When contrasted with the deed registry system, the defining features of a Torrens system are grounded in Crown action: A Crown-administered register of interests in lands, a Crown guarantee of indefeasibility of those registered interests, and an assurance fund or other comparable provision for compensation if needed.⁷⁰ Of course, all of this occurs in the context of asserted Crown sovereignty and is subject to the implied constitutional limitations imposed by s. 35.

As noted in the introduction to this report, such assumptions are now being tested in the courts by Indigenous Peoples, who have long questioned the “alchemy” by which Crown assertions of sovereignty over Indigenous lands occurred, and whether such assertions can be justified on constitutional grounds. This is a live issue before the courts.⁷¹

This controversy accordingly raises a number of critical questions for private land conservation, beginning with whether the simple registration of a fee simple title by a land registry office constitutes Crown conduct sufficient to trigger a duty to consult (or, if so, any substantial accommodation).

Before turning to the legal questions, we first examine the process of registration. Using the British Columbia process as an example, we note that the *Land Title Act* stipulates that, before registering an indefeasible title to

⁶⁹ In contrast, a deed does not confer validity on the transfer of title, and it is ultimately left to the purchaser to undertake the expensive and labour-intensive process of looking behind the register to determine whether “a purported interest actually stands at the end of a good chain of title.” Consequently, in a deed registry system, there is no Crown decision that is taken in respect to the transfer of title, and it is unlikely that any duty to consult arises when an interest is entered into the registry.

⁷⁰ Bankes, Nigel, Sharon Mascher & Jonnette Watson Hamilton. (2014). Special Issue: Law on the Edge The Reconciliation of Aboriginal title and its Relationship with Settler State Land Titles Systems. *UBC Law Review*. 47 829-888 at para 6.

⁷¹ Borrows, John. (1999). Sovereignty’s Alchemy: An Analysis of *Delgamuukw v. British Columbia*. *Osgoode Hall Law Journal* 37 (3) 537-596. <https://digitalcommons.osgoode.yorku.ca/ohlj/vol37/iss3/3> accessed 2021-04-18. See also; Macklem, Patrick. (2001). *Indigenous Difference and the Constitution of Canada*. Toronto: University of Toronto Press; Miller, Robert J. et al. (2010). *Discovering Indigenous Lands: The Doctrine of Discovery in the English Colonies*. Oxford: Oxford University Press; Borrows, John. (2015). The Durability of *Terra Nullius: Tsilhqot’in Nation v British Columbia*. *UBC Law Review* 48 (3) 701; Walters, Mark D. (1999). The ‘Golden Thread’ of Continuity: Aboriginal Customs at Common Law and Under the *Constitution Act, 1982*. *McGill Law Journal* 44 (3) 711.

land (s. 169), a transfer of interest in land (s. 187), a charge (s. 197) or a transmission of an estate in fee simple (s. 260), the Registrar must be satisfied that: (1) “the boundaries of the land are sufficiently defined by the description or plan on record in the land title office or provided by the applicant, and;” (b) “a good safe holding and marketable title in fee simple has been established by the applicant.”⁷²

“Good safe holding and marketable title in fee simple” is not defined in the *Act* and has been the subject of limited litigation and court interpretation. Nevertheless, this question is the point on which registration turns; it should be noted that some courts have determined that Aboriginal title is not a registerable interest as it does not have the requisite “good safe holding” and “marketable” features.⁷³ But in the context of a private land transfer, and the duty to consult, however, the question is not whether the applicant, in fact, has good safe holding and marketable title, but whether the assessment of that title and subsequent decision to accept or reject registration constitutes Crown conduct sufficient to meet the second branch of the test in *Haida*.

As noted in the discussion above, the threshold for Crown conduct is low and the courts have interpreted “conduct” quite broadly and held that it should be defined not by its form, but by its potential for adverse impacts.⁷⁴ As discussed in the previous section, it is clear that with the limited exception of the Legislature itself, virtually any direct Crown action or indirect Crown action undertaken by Crown agents acting in place of the Crown could trigger the duty.⁷⁵

Further, it is likely that the land title registry itself, especially in circumstances where it has been granted statutory authority to make administrative decisions, may be an administrative tribunal which itself owes duties to consult. The courts have clearly situated Crown-empowered administrative entities as having Crown responsibilities for consultation and accommodation in situations where they possess “remedial powers necessary to do what it is asked to do in connection with the consultation.”⁷⁶

However, courts have not considered this question explicitly, and there are other factors which complicate the legal analysis of whether the registration of title gives rise to the duty to consult in all situations.

The primary issue arises as a consequence of Canada’s colonial history: the courts have been unwilling to examine what is arguably the very foundation of the Canadian state. The long-held legal assumptions that Crown sovereignty was its own justification was itself a bar to successful litigation until 1982. Even after s. 35 was enacted under the *Constitution Act, 1982*, the Supreme Court has clarified that the law of consultation “is not a

⁷² *Land Title Act* RSBC 1996 c 250 ss 169, 187, 197, 260.

⁷³ *Uukw v British Columbia* (1987), 16 BCLR (2d) 145 (CA) [“Uukw”]; the BCCA confirmed Aboriginal title is not a registerable interest in *Skeetchestn Indian Band and Secwepemc Aboriginal Nation v Registrar of Land Titles, Kamloops*, 2000 BCCA 525 [“Skeetchestn”]; *James Smith Indian Band v Saskatchewan (Master of Titles)* [1995] 6 WWR 158 (Sask CA) [“James Smith Indian Band”].

⁷⁴ *Clyde River* at paras. 4, 8, 25.

⁷⁵ *Tsleil-Waututh*; *Carrier Sekani* at para. 81.

⁷⁶ *Carrier Sekani* at para. 60.

vehicle to address historical grievances.⁷⁷ The courts are concerned with present Crown conduct and whether currently contemplated actions will adversely impact an Aboriginal or treaty right now or in the future. The duty to consult is not retroactive.⁷⁸

Accordingly, to give rise to a duty to consult, there must be a present causal relationship between the proposed government conduct or decision and the potential for adverse impacts on Aboriginal claims or rights. "Past wrongs, including previous breaches of the duty to consult" are insufficient. Furthermore, the adverse effect in question must be in respect of the exercise of the right itself; merely speculative impacts or adverse effects on a First Nation's future negotiating position will not suffice.

This distinction between historical legacies and present impacts may account for why the registration of title under the Torrens system has not been well developed as part of the law of consultation. In much of the country, public land was 'patented' and private land tenure was granted in previous centuries. Consequently, triggering the duty to consult hinges largely on whether the consideration of an application for registration constitutes a new, independent Crown action with a new adverse impact on an Indigenous people, as opposed to being merely the most recent exchange of lands that were historically alienated and for which consultation now is precluded.

Accordingly, circumstances giving rise to a duty to consult about dispositions of land are likely to exist:

- In the Northern territories or those portions of provinces where lands are held 'by the Crown' and a specific use of those lands is being considered for the first time;
- Where lands held by the Crown are being 'patented' and made available within the land title system for future acquisition of title by private owners; and
- Elsewhere where the Crown is making a disposition of public lands to private entities.

We are aware of several cases in which litigation arising the above circumstances is ongoing or pending. We also note that this list of circumstances is not exhaustive, and that other dispositions or uses of public lands may trigger consultation obligations as well.

Consultation in the Context of Treaty Negotiations

It should also be noted that, as a matter of government policy, private lands are not typically contemplated for inclusion in future treaty settlement lands, unless first purchased from a fee simple owner by Canada, the province or territory, or the First Nation. However, in situations where such negotiations are ongoing, the duty to

⁷⁷ Chippewas of the Thames First Nation v Enbridge Pipelines, 2017 SCC 41 [Chippewas of the Thames] at para 21.

⁷⁸ This is not to say that there are no other legal mechanisms for addressing historical grievances between Indigenous people and the Crown, only that those mechanisms are not part of the duty to consult. Other processes, including rights and title litigation, 'land claim' negotiations, and specific treaty claims, among others, are often utilized to advance these issues.

consult can arise where the Crown contemplates a conversion, sale or transfer of land from Crown to private hands.

This was determined in a 2005 case before the British Columbia Supreme Court. In that case, the BCSC determined that a common law duty to consult can be triggered if the Crown contemplates sale or sub-lease of lands subject to a claim or under active treaty negotiation.⁷⁹ The land in question was provincial Crown land, subject to an Aboriginal title claim by Musqueam Indian Band, which had been in active treaty negotiations with BC in the decade preceding the case. Here the potential relocation of a casino would have removed land available for treaty negotiation, and generally impacted Musqueam's Aboriginal title claim as the development would make the lands more valuable and so more difficult for Musqueam to acquire.⁸⁰ The court held that the appropriate remedy for the harm to Musqueam from the Crown's failure to consult and potentially accommodate was economic compensation, and so did not justify setting aside the Crown's decision and cause consequential damage to a third party.⁸¹ This case both illustrates that the duty to consult can still be found on lands not currently subject to treaty but included in ongoing treaty negotiations, and highlights the clear priority that Canada's courts place on protecting third party property rights.

Third Party Rights and Constitutional Rights

Aboriginal Title

The Crown's guarantee of an indefeasible interest against all other parties operates to protect the rights of private owners. In the *BC Land Title Act*, this principle is expressed in s. 23(2): "An indefeasible title, as long as it remains in force and uncanceled, is conclusive evidence at law and in equity, as against the Crown and all other persons, that the person named in the title as registered owner is indefeasibly entitled to an estate in fee simple to the land described in the indefeasible title", subject to listed limitations.⁸² However, unlike registration, there are no prescribed steps the Registrar must undertake to guarantee title – it simply flows from the statute.

The unresolved question, therefore, is whether such statutory protection is constitutionally valid in light of Aboriginal title recognized and affirmed under s. 35. All statutes must be constitutionally valid, or they can be struck down by the courts.

Aboriginal title is the highest form of Aboriginal interest recognized under Canadian law. Before Canada was a country, imperial British law recognized that Indigenous people had "native title" to the lands to which Britain asserted sovereignty. The Royal Proclamation of 1763 declared that only the British Crown could acquire land from First Nations, and that this could only be done through treaties or purchase by the Crown. Aboriginal title

⁷⁹ *Musqueam Indian Band v. British Columbia (Minister of Sustainable Resource Management)*, 2005 BCCA 128 (CanLII), <<https://canlii.ca/t/1jwjn>>

⁸⁰ *Musqueam* at para. 115.

⁸¹ *Musqueam* at para. 118.

⁸² *Land Title Act*, RSBC 1996 c 250 s 23(2)(a-j)

continues to this day and is recognized as a unique form of interest in lands that were held exclusively by an Indigenous group prior to the date of European control. Aboriginal title recognizes that the Indigenous group has exclusive use and control over those lands, including the rights to decide how such lands are used and governed. Although Aboriginal title has always existed in Canadian law, it was only recently declared to exist on specific lands in 2014 in the landmark Supreme Court ruling *Tsilhqot'in Nation v British Columbia*.⁸³

However, the courts have not yet directly considered the question of how Aboriginal title relates to private property. In considering Aboriginal title claims, the courts have generally upheld the concepts of indefeasibility and the idea of an "innocent third-party purchaser for value" is protected in circumstances where the underlying title is "tainted" by fraud or other defects. This was the case in 2000, where the Ontario Court of Appeal acknowledged in *Chippewas of Sarnia Band v Canada*⁸⁴ that "it would plainly be wrong" to deny a potential Aboriginal title claim purely on the grounds that recognition of the claim would be troublesome to others⁸⁵ but suggested that such title, if established, could not defeat the interests of innocent third parties who relied on seemingly valid acts of their government or public officials to acquire their interests in private property, and that such private interests should be protected.⁸⁶ While the Ontario Court of Appeal was dealing with a potential title claim, even when Aboriginal title was declared in *Tsilhqot'in*, the Supreme Court was careful to note that the declaration of title in that case did not apply to "privately owned or underwater lands."⁸⁷

This leaves the question still unresolved. Professor Kent McNeil, writing about the interaction between land registration and Aboriginal rights, expresses the view that there are "real limitations" to how far courts in Canada will be willing to go to correct injustices caused by colonialism and dispossession. He suggested that in cases in which Aboriginal title and rights are pitted directly against private property interests, they will likely be decided on pragmatic grounds, and only to "the extent to which Indigenous rights can be reconciled with the history of British settlement without disturbing the current political and economic power structure."⁸⁸

From our perspective, a continued justification of Indigenous dispossession on the basis of how political and economic power is currently distributed within Canadian society is not a legally satisfactory outcome, particularly in situations where Aboriginal title is found to exist. The desire of the courts to avoid impacts on innocent private landowners must be balanced with the constitutional imperative of reconciliation with Indigenous Peoples.

⁸³ *Tsilhqot'in Nation v British Columbia*, 2014 SCC 44 ["Tsilhqot'in"]

⁸⁴ *Chippewas of Sarnia Band v Canada (Attorney General)*, 2000 CanLII 16991 (Ont CA) ["*Chippewas of Sarnia*"] leave to appeal refused, 2001 CarswellOnt 3952 (SCC).

⁸⁵ *Chippewas of Sarnia* at para. 262.

⁸⁶ As a side note there are two systems of indefeasibility in Canada: deferred and immediate. In jurisdictions with immediate indefeasibility the state will guarantee title as soon as it is registered, regardless of past fraud or defects in the title. Deferred indefeasibility, in contrast postpones granting indefeasible title to the next bona fide purchaser for value. Ultimately both systems have the same effect with the state guarantee of title, however, a deferred system of indefeasibility permits in theory for courts to peek behind the curtain and assess the validity of title after registration. Consequently, a novel argument for consultation grounded in the Crown guarantee of title might fare better in a jurisdiction under the operation of deferred indefeasibility.

⁸⁷ *Tsilhqot'in* at para. 9.

⁸⁸ McNeil, Kent. (2004). The Vulnerability of Indigenous Land Rights in Australia and Canada. *Osgoode Hall Law Journal*, 42, 271-302 at para. 47.

Although Canadian courts have so far avoided directly addressing the question of how fee simple land interacts with Aboriginal title, there is no doubt that they will have to answer it soon. There have been several instances where unextinguished Aboriginal title has been asserted to private property in disputes that were resolved prior to a ruling by the courts.

The contexts that are most likely to give rise to such a case exist in areas where there are no treaties, including most of British Columbia, southeastern Ontario, along the St. Lawrence River and Gulf of Quebec, and much of Newfoundland and Labrador. Similarly, areas subject to older historic treaties, including the Peace and Friendship treaties in the Maritimes and the Douglas Treaties in British Columbia, are subject to Aboriginal title, those treaties having been interpreted as not having required Indigenous people to “cede and surrender” their Aboriginal title to the Crown. As will be discussed in the following section, even in those parts of Canada under the post-Confederation “Numbered Treaties” (much of Ontario, the Prairies, and portions of BC and the NWT), where the written texts of the treaties are clear on this point, there is considerable doubt as to whether the Indigenous signatories to the treaties had any understanding or intention to “surrender” their Aboriginal title or “give up the land” to the Crown.

A notable dispute on Grace Islet in 1990 between land developer Barry Slawsky and the Cowichan Tribes provides an illustrative example of how such disputes might arise:

Mr. Slawsky bought fee simple title to Grace Islet (near Salt Spring Island in BC) and registered his interest with the Land Title Office. He successfully had the land rezoned for a residential development; but soon after breaking ground he unearthed several burial cairns on the property. Controversially, Slawsky proceeded with construction. In 2015 Cowichan Tribes informed the BC Government that if the province did not repurchase the fee simple interest from Slawsky, Cowichan Tribes would claim unextinguished Aboriginal title to Grace Islet.

The matter proceeded to litigation. In its statement of claim, Cowichan Tribes sought a declaration that the descendants of the Cowichan Nation had Aboriginal title to Grace Islet under s. 35(1) of the *Constitution Act 1982*, as the Cowichan people exclusively occupied Grace Islet as a burial ground before European contact. Cowichan Tribes contended that the conversion of this land to private property through the Crown's grant of fee simple interest in the mid-1900s was invalid and unjustifiably infringed Aboriginal title to these lands.⁸⁹

In February 2015, BC purchased Grace Islet from Slawsky, an action “presumably taken to avoid potentially precedent-setting litigation that favourably pitted Aboriginal title against private ownership.”⁹⁰ As the law stands, had the case proceeded to trial, government would have likely argued that the alleged infringement of Aboriginal title through the Crown's grants of fee simple to individual property owners was justified. It should be noted that the question of justifiable infringement is distinct from the question of whether a duty to consult is triggered and

⁸⁹ Borrows, John. (2015). Aboriginal title and Private Property. *Supreme Court Law Review*, 71 (5), 91-134 at 96 quoting statement of claim author had on file.

⁹⁰ Borrows, 2015 at 99.

does not have the same requirement for a current issue with a causal link to a potentially impacted Aboriginal right as discussed in *Chippewas of the Thames* and *Carrier Sekani*. The SCC in both *R v Sparrow*⁹¹ and *Tsilhqot'in*⁹², has set a high bar for justifying infringements of Aboriginal title. As noted by Professor John Borrows “while it is possible, it’s hard all the same to imagine that the building of a house would trump the protection of 18 graves in this situation.”⁹³

The Grace Islet case study illustrates the potential conflicts that may arise in circumstances where private property owners seeking to advance their own interests as owners fail to recognize that, before the land was made available to settlers by the Crown, it may have been used and occupied by Indigenous people. A government failure to consult with impacted Indigenous Peoples can have significant consequences for private owners. This is particularly important in areas that are subject to Aboriginal title claims, but as the *Halcan*, *Bartlemann* and *Little Salmon Carmacks* cases described below demonstrate, can also arise in areas subject to historic and modern treaties.

Professor Borrows observes that the Grace Islet incident is instructive, in that it illustrates that private ownership and Aboriginal title do not necessarily occupy two unrelated legal worlds, and that overlapping rights can and do occur.⁹⁴ The general trend in Canadian case law, consistent with the SCC’s observation in *Sparrow* that “section 35 is a promise to Aboriginal people”, is to try to promote reconciliation between private property ownership and Aboriginal rights and title.

Two important cases are currently before the BC Supreme Court in which the *de facto* assertion of ownership and control over Indigenous lands are being litigated at trial: *Cowichan Tribes v Canada* and *Kwikwetlem First Nation v British Columbia*.⁹⁵ These cases—and others—may provide the context in which the courts finally address what is probably the most significant issue on the “long road of conciliation”: how private fee simple land title that has long been held by settlers can co-exist with Aboriginal title that is no longer just asserted or contested, but recognized or proven.

Several leading legal scholars – including Borrows – note that this involves recognition of Indigenous jurisdictions over private land, including the ability to make laws concerning the protection of ecological and cultural values on private lands within traditional territories. This would be generally consistent with the idea of how jurisdictions and responsibilities between different levels of public government operate concurrently, and how private land tenures within areas subject to modern treaty and self-government arrangements are being addressed under modern treaties. However, how the courts address the underlying questions of whether and how Indigenous title and rights can co-exist with private land ownership today will likely remain indeterminate for some time to come.

⁹¹ *Sparrow*.

⁹² *Tsilhqot'in*.

⁹³ Gordon, Katherine Palmer (January 2015). Uncharted Territory. *Focus Online*. <http://focusonline.ca/?q=node/819>

⁹⁴ Borrows, 2015 at 99.

⁹⁵ *Kwikwetlem First Nation v British Columbia*, 2021 BCSC 436 (CanLII) [“*Kwikwetlem*”]; *Cowichan Tribes v Canada* (Attorney General), 2017 BCSC 1575 (CanLII) [“*Cowichan Tribes*”]

Private Land Tenures in the Areas Subject to Treaty

The underlying issues and duties relating to the duty to consult in respect of private land interests are not confined to those parts of Canada in which treaties have not been settled. The constitutional recognition of treaty rights in s. 35 also gives rise to the duty to consult when dealing with lands subject to a treaty between the Crown and First Nations.

Accordingly, NGOs in areas of Canada subject to historic and modern treaties are advised to carefully consider how treaty rights may be engaged when considering private land transactions.

A key consideration in the interpretation of historic treaties, which broadly cover agreements made between the 1700s and the early 1900s and include both the pre-confederation treaties as well as what are known as “the numbered treaties” that were concluded after Confederation, is that they are the subject of considerable dispute. The language of the treaties is English and contain legal, technical or ambiguous terms like “cede, release and surrender” which was unlikely to have been understood by the Indigenous parties. Beyond the language in the treaties themselves, there are also oral discussions, written notes, negotiation processes and subsequent conduct that can affect treaty interpretation; it is not, then, a matter of simply reading the treaty text. In a notable case where the written text of Treaty 8 and Treaty 21 was examined at trial after hearing oral evidence from Indigenous witnesses who were present when it was signed, the Supreme Court of the Northwest Territories concluded that there was “significant doubt” that the Indigenous signatories intended to “give up the land”.⁹⁶

As a result of these ambiguities around the respective intentions and understandings of the Crown and Indigenous parties in the conclusion of historic treaties, the courts have adopted an interpretative rule requiring a “broad and remedial” construction of the terms of these documents in favour of Indigenous signatories. This is particularly significant in relation to treaty rights to continue to use and access unoccupied lands within the treaty area.

Consider, by way of example, the interpretation of the historic Douglas treaties in British Columbia. The Douglas Treaties are a series of 14 documents purportedly surrendering lands on Vancouver Island to the Hudson’s Bay Company, while reserving village sites and enclosed fields for the use of Indigenous signatories and their descendants. They further protected the right to hunt over unoccupied lands and carry out fisheries as formerly.⁹⁷

In *R. v. Bartleman*,⁹⁸ the British Columbia Court of Appeal upheld a treaty right to hunt on privately held fee simple lands north of Duncan BC, confirming that treaty rights can supersede provincial laws and impact private

⁹⁶ Re Paulette et al. and Registrar of Titles (No. 2), 1973 CanLII 1298 (NWT SC) [“Paulette”].

⁹⁷ For more caselaw on the recognition of Douglas Treaty rights see *R v White and Bob* [1964] BCJ No 212 (BCCA); *Saanichton Marina Ltd v Tsawout Indian Band* [1989] BCJ No 563 (BCCA).

⁹⁸ [1984] 3 CNLR 114 (BCCA) [“Bartleman”].

property. Importantly, the court determined that the land in question, although privately owned, was “unoccupied” within the meaning of the treaty, thus allowing Bartleman to exercise his hunting rights.

Further interpretation of treaty provisions that interact with private property can be found in *Hunt v Halcan Log Services Ltd*⁹⁹ in which the BC Supreme Court granted an injunction against logging on land owned in fee simple by Halcan Log Services Ltd. In this case, the Kwakiutl Band’s request for an injunction was grounded in their Aboriginal and treaty rights to hunt, harvest, and fish on adjacent land to the island, and their rights of access to ancestors’ gravesites. Kwakiutl claimed they would suffer irreparable harm if the logging were allowed to continue. The court noted that, if an injunction were granted, Halcan would not suffer irreparable harm, and damages would be relatively simple to calculate, while refusing to grant the injunction to Kwakiutl would result in irreparable harm and the “impossible task” of determining damages for a loss of Aboriginal or treaty rights.¹⁰⁰ This injunction was accordingly granted on private land, despite the fact that Halcan held indefeasible title registered under the *Land Title Act*. The court noted in particular that the BC legislation made title subject to “subsisting conditions, provisos, restrictions, exceptions and reservations, including royalties contained in the original grant or contained in any other grant or disposition from the Crown”.¹⁰¹

In granting the injunction, it was not necessary for the court to decide whether the treaty constituted a “subsisting condition”, but it clearly notes that the constitutional priority of a treaty obligation can limit a fee simple owner’s use of their land. It follows that treaty rights can supersede interests in private property, and that changes to that property that could affect a right may require consultation and accommodation.

Accordingly, it is important to note that, even where the validity of a private tenure is not in question, constitutional obligations on the part of the Crown to maintain access to fishing, hunting, gathering, or other traditional practices to which First Nations have a treaty right may continue to exist and may have priority over the rights of the private owner. As *Halcan* clearly demonstrates, the specific rights and obligations that arise in a historic treaty context will depend on the specifics in the treaty, but conservation easement agreements, restrictive covenants or other measures that landowners or managers may wish to implement on private conservation lands may not survive a constitutional challenge.

In areas subject to modern treaties (beginning with the 1975 *James Bay and Northern Quebec Agreement*), the rights and obligations of each party are much more specifically and clearly defined than in the historic treaties. Modern treaties typically recognize outright ownership and control over settlement lands to the Indigenous party, and several such treaties empower the Indigenous party to legislate in respect to land ownership, management and conservation.¹⁰²

⁹⁹ [1987] BCJ No 146 (BCSC) [“*Hunt*”].

¹⁰⁰ *Hunt* at para. 40.

¹⁰¹ *Hunt* at para. 6.

¹⁰² See the *Nisga’a Land Title Act* or the *Tla’amin Land Law* which uses a hybrid system in tangent with the BC Land Title Office.

Much more reliance can be placed on the specific language of modern treaties, but as with other treaty rights, the Crown will always be subject to the duty to consult and the Honour of the Crown.

This was recently affirmed by the SCC in *Beckman v Little Salmon Carmacks First Nation*, where these concepts were held to be constitutional principles, existing independently of the treaty—the Crown’s obligations of consultation and accommodation cannot be displaced by a treaty. A modern land claims agreement does not, therefore, constitute a complete code for the Crown’s consultation obligations, and cannot preclude a governmental duty to consult simply because this requirement is not explicitly set out in the treaty. Importantly, in *Beckman*, the SCC confirmed that the treaty is not an endpoint, but rather an important “step” along the “long road of reconciliation.”¹⁰³

Property Interests other than Fee Simple Title

The above discussion has been largely framed in terms of fee simple title, as it provides the most expansive ownership rights to private owners, and consequently, is a more likely source of impacts on the exercise on Aboriginal and treaty rights that may give rise to legal obligations on the part of the Crown. However, the registration and codification of other interests in land may also trigger Crown consultation obligations.

Interests less than title are important vehicles for private land conservation in Canada. Conservation easement agreements and restrictive covenants between private owners and conservation NGOs are important tools for facilitating conservation, as they allow private parties to confirm and register restrictions on certain types of land use on land title, without requiring the outright purchase, sale or transfer of the property. Such interests, once registered, “run with the land” and thus will bind all future landowners to their terms.

As with fee simple title, the registration of those interests must be lawful, and in Torrens system jurisdictions, the Registrar must approve registration of the interest.¹⁰⁴

As an example of how such interests are created, consider the regime under Alberta’s *Land Titles Act*. The statute details the process for registering a caveat such as a conservation covenant or easement:

50 (1) The Registrar shall decide whether any instrument or caveat presented to the Registrar for registration is substantially in conformity with the proper prescribed form or not and may reject any instrument or caveat that the Registrar decides for any reason to be unfit for registration.

(2) When an instrument or caveat is presented to the Registrar for registration subject to any condition, the Registrar shall reject the instrument or caveat for registration if the condition is not satisfied at the time the instrument or caveat would otherwise be registered.

¹⁰³ *Beckman v Little Salmon Carmacks First Nation* 2010 SCC 53 at para.12.

¹⁰⁴ See for example the BC *Land Title Act* RSBC 1996 c 250 s 23(2) s 219(3)(c), which allows non-governmental organizations designated by the Minister of Agriculture and Lands to enter into conservation covenants with private landowners.

(3) The Registrar may reject any document submitted for filing or registration which is in the Registrar's opinion for any reason unsuitable to be duplicated pursuant to section 19.¹⁰⁵

The level of discretion provided to the Registrar under this *Act* suggests that the Registrar can engage in consultation and accommodation with remedial effect. Based on the general principles articulated by the Supreme Court of Canada, this seems to fit squarely within the thresholds of Crown conduct triggering a duty to consult. However, as the new interest is “less than title”, the recognition or registration of this interest may not pass the threshold of “present Crown action” and may be barred by the *Carrier Sekani* and *Chippewas of the Thames* limitation on the duty arising in respect of past or ongoing conduct. Courts in some provinces have also found that holders of lesser interests do not obtain indefeasible interest, merely the benefit of the charge.¹⁰⁶ This may operate to limit the strict application of the duty to consult in such circumstances, unless there is direct Crown involvement or a “new” limitation that is being placed on the exercise of an Aboriginal or treaty right as a result of the conservation easement or restrictive covenant.

The duty to consult and accommodate as currently understood in Canada flows from the “Honour of the Crown,” a series of constitutional obligations to uphold s. 35 rights related to modern and historic treaties and Aboriginal rights and title. The Crown can delegate aspects of this duty to third parties; however, the Crown ultimately bears the responsibility for ensuring that adequate consultation is carried out.

The principal instances where a duty to consult could arise in the context of private land conservation are: (1) NGOs purchasing or managing conservation land with government funding or receiving land donations with government incentives; (2) registering interests in the land through the Torrens system; (3) transferring fee simple land from an NGO to the Crown.

Although Canadian law currently imposes no freestanding duty to consult with Indigenous Peoples on NGOs engaged in conservation on fee simple land, NGOs have myriad social and ethical responsibilities to engage with impacted Indigenous populations, particularly in recognition of the legacy of dispossession and denial of Indigenous rights stemming from both public and private conservation movements in Canada.

The intersections of private land conservation interests with Indigenous Peoples and their rights and interests are both local and national in scale. The following map in Figure 1 shows only some of these intersections but illustrates the extensive interconnections between Indigenous lands, held as reserve or settlement lands, with privately protected areas based on data from the land registry system. This representation does not capture the full extent of Indigenous land use, historic territory, or constitutionally protected rights to lands, resources and self-governance, so should be viewed only in that context.

¹⁰⁵ *Land Titles Act*, RSA 2000 c L-4 s 50.

¹⁰⁶ *Gill v Bucholtz* 2009 BCCA 137 at para. 18.

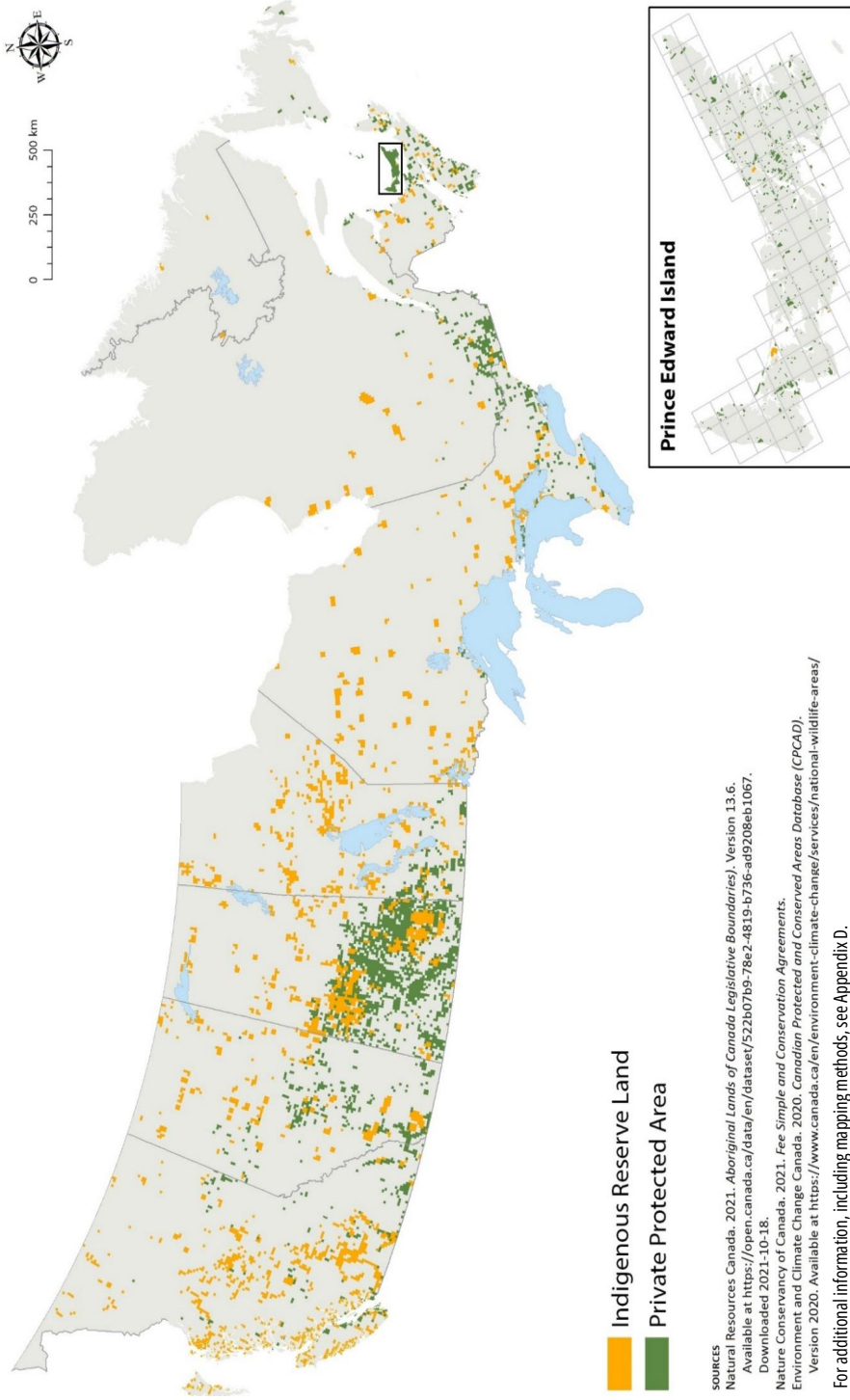


Figure 1: Map of Indigenous Reserve Lands and Private Protected Areas in Southern Canada

Province	Privately Protected Land	Indigenous Land	Reserves	Land Claims	Other Land
Alberta	101,760	782,928	782,928		
British Columbia	127,849	366,033	366,033		
Manitoba	36,481	532,940	532,940		
New Brunswick	7,866	16,484	16,484		
Newfoundland & Labrador	3,395	7,907	7,907		
Nova Scotia	21,011	11,920	11,920		
Ontario	49,681	834,171	834,171		
Prince Edward Island	7,572	753	753		
Quebec	58,216	427,931	81,808	344,924	1,198
Saskatchewan	366,401	1,014,935	1,014,935		
Total	780,232	3,996,001	3,649,879	344,924	1,198

Table 1: Hectares of Indigenous Lands and Privately Protected Area in Southern Canada

Sources:
 Natural Resources Canada. 2021. Aboriginal Lands of Canada (Legislative Boundaries). Version 13.6. Available at <https://open.canada.ca/data/en/dataset/52b07b9-78e2-4879-b736-cd9208eb1067>. Downloaded 2021-10-18.
 Nature Conservancy of Canada. 2021. Fee Simple and Conservation Agreements. Downloaded August 31, 2021.
 Environment and Climate Change Canada. 2020. Canadian Protected and Conserved Areas Database (CPAD). Version 2020. Available at <https://www.canada.ca/en/environment-climate-change/services/national-wildlife-areas/protected-conserved-areas-database.html>. Downloaded 2021-04-09.
 Environment and Climate Change Canada. 2016. Private Conservation Lands. 10 km Square Grid.



Photo of mountains and trees surrounding a small pond. This is Jumbo Pass in Qat'muk within the traditional territory of the Ktunaxa. The Ktunaxa have been working for decades to protect the area and are now working on developing a Ktunaxa-led protected area for the region. A few years ago, The Ktunaxa worked with the province of British Columbia and others, including the Nature Conservancy of Canada (NCC), to be able to extinguish development rights which was impeding protection of the important area. Photo Credit: Jon Watts.

Section 2: Securement in an International Context

As noted in Section 1, all lands in Canada were under the sovereignty of Indigenous Peoples prior to the assertion of sovereignty by the Crown. Whether understood within the context of s. 35 of Canada's Constitution or through the lens of pre-existing Indigenous legal systems, Indigenous nations maintain their rights and responsibilities for those lands. Accordingly, Indigenous nations maintain their own protocols for actions within their territories, positioned within their own traditions of governance, rights, responsibilities and expectations of consultation. The rights of Indigenous Peoples to maintain their laws, traditions and customs are affirmed in the *United Nations Declaration on the Rights of Indigenous People*.¹⁰⁷

As noted earlier, Canadian law imposes a duty to consult and accommodate Indigenous nations. Beyond this, in international law, there is a growing expectation and elaboration of the duty of States and their agencies to, at minimum, engage with Indigenous communities and more fulsomely achieve the free, prior and informed consult (FPIC) of such communities.

This section addresses the roles and responsibilities of NGOs involved in land securement from the perspective of international law, agreements and standards adopted by both nation states (including Canada) and the international conservation community.

International Law, Convention and Policy

While law and policy in this area is still under development in Canada, there has been a global shift over the past decade towards consulting, working with, and deferring to the leadership of Indigenous Peoples in questions of conservation. There are a number of international agreements and objectives calling for recognition of Indigenous

¹⁰⁷ See in particular Articles 27 and 34.

rights, a greater role for Indigenous Peoples in conservation management, as well as voluntary policies adopted by NGOs which are directed towards fostering Indigenous engagement and consultation in conservation projects.

International programs have recognized a variety of protected area types with associated directions for building respectful relations with Indigenous Peoples. These have reflected a growing crisis of increasing threats and the loss of cultural and biological diversity, a recognition of potential conservation opportunities, and the diversity of peoples' worldviews, cultures, responsibilities and rights. These emerging international directions have a direct influence on domestic expectations and practices in Canada for land trusts and conservation practitioners engaged with Indigenous Peoples more generally.

The 1992 *Convention on Biological Diversity* (the "CBD") is a key foundation for international conservation actions, including efforts towards achieving the Aichi Targets. With the Preamble setting some context, Article 8, and in particular 8(j), specify obligations in relation to Indigenous Peoples:

Preamble

The Contracting Parties, ... Recognizing the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components, ...

Article 8. In-situ Conservation

Each Contracting Party shall, as far as possible and as appropriate:

(j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;

Target 18: By 2020, the traditional knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biodiversity, and their customary use of biological resources, are respected, subject to national legislation and relevant international obligations, and fully integrated and reflected in the implementation of the Convention with the full and effective participation of indigenous and local communities, at all relevant levels. [emphasis added]¹⁰⁸

¹⁰⁸ United Nations Environment Programme (UNEP) Conference of the Parties (COP) to the UN Convention on Biological Diversity (CBD). (2010). Decision Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Tenth Meeting. *Convention on Biological Diversity*. <https://www.cbd.int/doc/decisions/cop-10/cop-10-dec-02-en.doc>

Significantly, Aichi Target 18 is reflected specifically in Canada Targets 12 and 15:

Canada Target 12 – “By 2020, customary use by Indigenous Peoples of biological resources is maintained, compatible with their conservation and sustainable use.”¹⁰⁹

Canada Target 15 — “By 2020, Indigenous traditional knowledge is respected, promoted and, where made available by Indigenous Peoples, regularly, meaningfully and effectively informing biodiversity conservation and management decision-making.”¹¹⁰

The recognition of the rights, roles and responsibilities of Indigenous people in relation to conservation have also emerged over time through other international declarations, agreements and guidelines. Concepts of Indigenous self-determination and “free, prior and informed consent” (FPIC) are referenced in older international instruments on human and labour rights, such as the 1945 *UN Charter*¹¹¹, the 1966 *International Covenant on Economic, Social, and Cultural Rights* (ICESCR)¹¹², the 1966 *International Covenant on Civil and Political Rights* (ICCPR)¹¹³, the International Labour Organization’s 1957 *Indigenous and Tribal Populations Convention* (No. 107) *ILO Convention on Indigenous and Tribal Peoples in Independent Countries* (No. 169)¹¹⁴, and the 1993 *Vienna Declaration and Programme of Action on Human Rights*¹¹⁵.

These concepts are now more currently expressed in *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), which Canada has adopted and with which it proposes to bring federal laws into alignment through Bill C-15, which received third reading in the House of Commons on May 27, 2021 and became law on June 21, 2021.¹¹⁶

The CBD has developed a Working Group on Article 8(j), with a work program and linkages with other international bodies. The products of this work, adopted by the Parties to the Convention, have consistently emphasized respect for the relationship of Indigenous Peoples to their lands and Indigenous cultural practices,

¹⁰⁹ Biodivcanada. (2016). 2020 Biodiversity Goals & Targets for Canada.

<https://biodivcanada.chm-cbd.net/2020-biodiversity-goals-and-targets-canada>

¹¹⁰ Biodivcanada. (2016). 2020 Biodiversity Goals & Targets for Canada.

<https://biodivcanada.chm-cbd.net/2020-biodiversity-goals-and-targets-canada>

¹¹¹ United Nations. (1945). *Charter of the United Nations*. 1 UNTS XVI. <https://www.un.org/en/about-us/un-charter>

¹¹² United Nations. (1966). *International Covenant on Economic, Social and Cultural Rights*.

<https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

¹¹³ United Nations. (1966). *International Covenant on Civil and Political Rights*. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

¹¹⁴ International Labour Organization. (1957). *Indigenous and Tribal Populations Convention*. No. 107.

https://www.ilo.org/asia/info/WCMS_099176/lang-en/index.htm; International Labour Organization. (1989). *Indigenous and Tribal Peoples*

Convention, No. 169. http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NQ::P12100_INSTRUMENT_ID:312314

Note that neither Canada nor the United States are parties to these ILO Conventions.

¹¹⁵ United Nations. (1993). *Vienna Declaration and Programme of Action*. <https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>

¹¹⁶ C-15, An Act respecting the *United Nations Declaration on the Rights of Indigenous Peoples*.

<https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billid=11007812>

norms and laws, the importance of traditional knowledge, redress for removal from lands, and ethical engagement and free, prior informed consent, among others.

For example, the *Akwé: Kon Guidelines*¹¹⁷ provide guidance on cultural, environmental, and social impact assessment and measures for respecting and consulting Indigenous Peoples in establishing and managing protected areas. The 2010 *Tkarihwaí:ri Code of Ethical Conduct*¹¹⁸ guides governments and others on principles and procedures to consider when working with Indigenous communities, including: acknowledging traditional knowledge and intellectual property, full disclosure, prior informed consent, involvement and approval, inter-cultural respect, safeguarding ownership of cultural and intellectual heritage, fair sharing of benefits, protecting relationships with the environment, adopting a precautionary approach, respecting existing agreements, and non-discrimination. Further, the 2010 *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) to the Convention on Biological Diversity*¹¹⁹ came into force in 2014 as an agreement to supplement the CBD. While focused on genetic resources, it again highlights traditional knowledge, Indigenous laws and customs, FPIC, and fair benefit sharing.

Private land conservation is recognized and integrated within the overall program of work organized internationally under the CBD as well as domestically in Canada as a significant mechanism for achieving global conservation goals. Non-state conservation actions are formally recognized in the International Union for Conservation of Nature (IUCN) protected area classification system, including the following:

1. **Indigenous and Community Conserved Areas and Territories (ICCAs):** ICCAs are “territories and areas governed, managed, and conserved by custodian [!]Indigenous Peoples and local communities.”¹²⁰ This definition encompasses a broad range of initiatives across different countries; however, in general, all ICCAs have three common characteristics: (1) there is a close and deep connection between a territory or area and its custodian Indigenous people or local community; (2) the custodian people or community makes and enforces decisions and rules about the territory or area; (3) the governance decisions and rules and the management of efforts of the concerned people or community overall positively contribute

¹¹⁷ *Akwé: Kon* Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities. *Akwé: Kon* is a holistic Mohawk term meaning “everything in creation” provided by the Kahnawake community located near Montreal, Quebec, where the guidelines were negotiated. See: Convention on Biodiversity. COP 7 Decision VII/16. <https://www.cbd.int/decision/cop/?id=7753>
See more of the Working Group’s activities at: <https://www.cbd.int/convention/wg8j.shtml>

¹¹⁸ *Tkarihwaí:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities Relevant to the Conservation and Sustainable Use of Biological Diversity*. (2011). Secretariat of the Convention on Biological Diversity, Montreal. This Code was adopted by the CBD Conference of Parties in 2010. The word “*Tkarihwaí:ri*” is a Mohawk term, meaning “the proper way”, provided by Elders of the Mohawk community of Kahnawake where the code was negotiated. See: <https://www.cbd.int/traditional/code.shtml>

¹¹⁹ Convention on Biodiversity. (2011). *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) to the Convention on Biological Diversity - Text and Annex*. Secretariat of the Convention on Biological Diversity. Montreal. <https://www.cbd.int/abs/>

¹²⁰ Sajeva, Giulia et al/ (2019). Meanings and more... Policy Brief of the ICCA Consortium no. 7, at 5. <https://www.iccaconsortium.org/wp-content/uploads/2019/11/ICCA-Briefing-Note-7-Final-for-websites.pdf/> Accessed 2021-05-19.

to the conservation of nature.¹²¹ In Canada, the term Indigenous Protected and Conserved Areas (IPCAs) has been widely adopted as the equivalent term for ICCAs.

2. **Privately Protected Areas (PPAs):** A privately protected area is a protected area as defined by the IUCN under private governance including individuals, and groups of individuals, NGOs, corporations, for-profit owners, research entities, or religious entities.¹²²

The IUCN classification system further incorporates shared or co-management arrangements, as well as protected areas governed by governments where a government body holds (or delegates) the authority, responsibility and accountability for managing the protected area, determines its conservation objectives, develops and enforces its management plan, and often also owns the land, water and related resources.¹²³ Given that states have been the parties most recognized in international forums, international law, policy, guidance and documentation have all been conventionally focused on these state-based protected areas. “Other Effective Area-Based Conservation Measures” (or OECMs) are also recognized where in-place conservation outcomes are achieved outside a protected area but are not the primary objective of the measure or area¹²⁴.

Land trusts’ and other conservation charities’ lands will often fall into the category of a Privately Protected Area. In some cases, the organization may transfer the lands to a government agency for incorporation into a state Protected Area, or to or with an Indigenous community for an IPCA/ICCA. Occasionally, and with authorization from the donor, the land trust may sell the lands to raise revenues for its other protected area or stewardship purposes. Other non-profit or for-profit organizations may also hold lands of conservation value. These may be religious or academic institutions with natural lands or companies with properties used only in part for production facilities or for resource use.¹²⁵ Such lands may be managed either directly for a conservation purpose or for other purposes, with the former considered a PPA while the latter could be an OECM.

The roles and responsibilities of private conservation NGOs to recognize Indigenous lands and rights and to appropriately engage and consult with affected Indigenous Peoples were articulated in the declarations of the 2003 Fifth World Parks Congress and the Durban Accord¹²⁶. Since that time, a number of standards and practices

¹²¹ Sajevo, 2019.

¹²² The IUCN defines a protected area as “a clearly defined geographic space, recognized, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem and cultural values.” (Mitchell, Brent A. et al. (2018). *Guidelines for Privately Protected Areas. Best Practices for Protected Areas Series No. 29*. Gland, Switzerland: IUCN at 2.

¹²³ Dudley, N (ed.). (2008). *Guidelines for Applying Protected Area Management Categories*. Gland, Switzerland: IUCN.

¹²⁴ See the 2018 decision 14/8 of the Parties to the Convention on Biological Diversity, and the subsequent guidance document: IUCN-WCPA Task Force on OECMs. (2019). *Recognizing and Reporting Other Effective Area-Based Conservation Measures*. Gland, Switzerland: IUCN. <https://portals.iucn.org/library/node/48773>

¹²⁵ See: Mitchell, 2018; and Vershuuren, Bas et al. (2021). *Cultural and spiritual significance of nature: Guidance for protected and conserved area governance and management*. Gland, Switzerland: IUCN, at 3-4.

¹²⁶ “commitment to involve ... indigenous ... peoples in the creation, ... and management of protected areas ... that shares benefits with indigenous peoples” (IUCN. (2003). *The Durban Accord. IUCN World Parks Congress*. <https://www.iucn.org/sites/dev/files/import/downloads/durbanaccord.pdf>

documents with increasing international recognition and standing have emerged for implementing these commitments¹²⁷.

For Privately Protected Areas, such as those secured by land trusts and other conservation organizations, the IUCN's 2018 "Guidelines for Privately Protected Areas" provides specific direction on best practices:¹²⁸

Best Practice 1.4.1 - "Mechanisms for setting up PPAs should not undermine other legitimate rights to land or resources."

The IUCN asserts the importance for PPA prospective landholders to undertake due diligence to ensure that purchasing areas for the purpose of establishing a PPA does not undermine legal or customary rights. It is careful to specify that information on land title held by states or land registries is often insufficient. This necessitates further research and inquiries. The guidance goes on to state:

"it is the responsibility of the prospective landholders to understand potential traditional access rights of local communities and apply the principles of Free Prior and Informed Consent¹²⁹ when engaging with communities and their rights. It is also important to understand whether different access rights to specific resources, spiritual sites or access routes are challenged by the PPA and ensure that the PPA owners work in consultation with the communities in planning conservation interventions that might restrict these."¹³⁰

Landholders should also bear in mind the rights and obligations in UNDRIP in PPA decisions.

Best Practice 2.1.3 - "Incorporate [I]ndigenous, local, and traditional people and their knowledge, including, where appropriate, Traditional Ecological Knowledge into management"

Best Practice 2.1.4 Good consultation with stakeholders helps support their engagement and contribution to the development and management of the PPA.¹³¹

¹²⁷ CBD 2004 Plan of Work for Protected Areas; Dudley, N. (ed.). (2008). *Guidelines for Applying Protected Area Management Categories*. Gland, Switzerland: IUCN; Stolton, Sue, Redford, Kent H., and Dudley, Nigel. (2014). *The Futures of Privately Protected Areas. Protected Area Technical Report Series*. Gland, Switzerland: IUCN.[etc.]

¹²⁸ Mitchell, 2018.

¹²⁹ Free, prior, and informed consent (FPIC) is enshrined in UNDRIP requires in the context of conservation projects that a community has a right to give or withhold its consent to proposed activities with potential impacts on the lands that it customarily uses, occupies, or owns. Discussions must be free from intimidation or other pressures and the consent (if given) will be context specific; consultation cannot replace FPIC. Flora and Fauna International has asserted that FPIC is not a linear process culminating with a signed agreement bidding a community but should be understood as a right requiring an ongoing process of communication and engagement. (Flora & Fauna International. (May 2019). Flora & Fauna International's position on free, prior and informed consent, at 2. https://assets.fauna-flora.org/wp-content/uploads/2019/06/FFI_2019_Position-on-free-prior-and-informed-consent.pdf

¹³⁰ Mitchell, 2018 at 13.

¹³¹ Mitchell, 2018 at 16.

The IUCN recognizes the unique relationship Indigenous Peoples have with the land and the environmental and conservation benefits that come from learning from their stewardship practices. This recognition echoes the call to action in Aichi Target 18.

1.4 Recognize and support Indigenous peoples' right to self-determination by acknowledging that they are the owners and custodians of their cultural heritage, inclusive of rights to maintain customary governance, traditional institutions and decision-making processes. ...

4.1 Conduct collaborative and participatory processes in the assessment and inventory of the key attributes, and cultural and spiritual values of protected and conserved areas, ensuring that the principles of Free, Prior and Informed Consent are applied. ...

6.2 Define the purpose, objectives, standards, boundaries, zoning and regulations of each new protected area, with particular attention to the cultural and spiritual significance of nature, and ensure that the principles of Free, Prior and Informed Consent ["FPIC"] are applied in relation to agreements with indigenous people and local and religious communities. ... [emphasis added]

The Concept of Free, Prior and Informed Consent ("FPIC")

FPIC has multiple dimensions and implications. The concept of FPIC is understood to fall at the "deep end" of a spectrum of engagement approaches, from the shallow or perfunctory functions of notification, towards deeper engagements through involvement, engagement, consultation, and ultimately, seeking free, prior, and informed consent. The recommended practices for each level of engagement are increasingly specific and involve a range of duties that are to be applied to various securement activities.

Other applications are related to the FPIC concept. Recognized as independent authorities in their territories, Indigenous communities will set their own priorities for conservation and development. Various international documents uphold this authority as well as support providing resources, using traditional languages and cultural protocols, preventing dispossession, and providing for a right of return and reparations for past harms¹³². In the conservation context, this may translate into site selection criteria, permitted uses, the application of securement and related funds, training and capacity building, translations, co-ownership and co-management, and benefits agreements. Indigenous communities' control of their own knowledge systems and lands means following their

¹³² For example, see: See: UNDRIP and Secretariat on the Convention of Biodiversity. (2004). Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities. *CBD Guidelines Series*. [akwe-brochure-en.pdf \(cbd.int\)](http://www.cbd.int/akwe-brochure-en.pdf)

own protocols for privacy and sharing of Indigenous knowledge, and their participation in how and when a protected area may be declared, registered and counted in state and international databases¹³³.

The thrust and direction of international guidance to NGOs involved in PPA and securement work should inform conservational practice in Canada. While many of these guidelines are voluntary, and propose “best practices”, it should be understood that Canadian courts interpret legal obligations through the lens of a “purposeful and contextual approach”, and that consultation obligations are therefore directly informed by standards and values reflected in international law. This has been clearly articulated by the courts in relation to both human rights and environmental law in numerous cases,¹³⁴ and is literally the ‘textbook’ approach to statutory interpretation:

*...the legislature is presumed to respect the values and principles enshrined in international law, both customary and conventional. These constitute a part of the legal context in which legislation is enacted and read. In so far as possible, therefore, interpretations that reflect these values and principles are preferred.*¹³⁵

How FPIC and other principles relating to the rights of Indigenous Peoples will be expressed in Canadian law with the formal adoption of UNDRIP and the passage of domestic legislation can therefore be expected to reflect the evolution of international agreements, conventions, guidance and standards. International conservation practices and guidelines concerning Indigenous engagement should be understood to be important sources of guidance to NGOs working on PPAs, OECMs and other securement projects in Canada.

¹³³ The ICCA Consortium provides recent guidance that this “should only proceed with the free, prior and informed consent of the custodian community”, typically being Indigenous peoples. (ICCA Consortium. (2021). Territories of Life. *ICCA Consortium: worldwide*, at 51. <https://report.territoriesoflife.org/wp-content/uploads/2021/05/ICCA-Territories-of-Life-2021-Report-FULL-150dpi-ENG.pdf>

¹³⁴ References re Greenhouse Gas Pollution Pricing Act, 2021 SCC 11 (CanLII); 114957 Canada Ltée (Spraytech, Société d'arrosage) v Hudson (Town), 2001 SCC 40 (CanLII), [2001] 2 SCR 241; Baker v Canada (Minister of Citizenship and Immigration), 1999 CanLII 699 (SCC), [1999] 2 SCR 817, retrieved on 2021-04-22

¹³⁵ Sullivan, Ruth. (1994). *Driedger on the Construction of Statutes* (3rd edition). Toronto: Butterworths at 330.



A photo of two red kayaks in a lily pond in Norfolk County, Ontario. Norfolk County is a biodiversity hot spot and part of the Carolinian Life Zone. This unique ecosystem extends north from the Carolinas to southwestern Ontario. It is a critical area for conserving the species and habitats unique to Canada's Carolinian Life Zone, and for achieving conservation at a landscape level by building on a network of existing conservation lands. Photo Credit: NCC.

Section 3: Fulfilling Obligations and Building Relationships

In addition to the law of consultation and accommodation that has been articulated by Canadian courts to guide reconciliation between the Crown and Indigenous Peoples, and the international guidance flowing from the CBD, the IUCN and other bodies, the land trust and NGO communities in Canada are also developing their own internal requirements that guide relations with Indigenous Peoples. These recognize that legal requirements are a minimum and do not encompass the full scope of practice or depth of relationship necessary. NGO conservation activities within such territories can acknowledge and respect Indigenous nations through learning about and following such protocols. While a recent national survey indicates that only a third of land trusts have a relationship with their immediate Indigenous community¹³⁶, a number of them and other conservation organizations are exploring and putting into practice how to do so. These range from the Nature Conservancy of Canada at the national level to provincial associations and local land trusts working regionally, such as with Williams Treaty First Nations in central Ontario.

Notable examples of established standards for conservation charities include the 2018 *Imagine Canada's Standards Program for Canada's Charities and Non-Profits* and the 2019 *Canadian Land Trust Standards and Practices*, both discussed in detail below.

Imagine Canada is a national organization that promotes philanthropy, supports the charitable sector, and has developed a certification program for Canada's charities and non-profit corporations¹³⁷. The program addresses five areas: board governance, financial accountability and transparency, fundraising, staff management, and volunteer involvement. The standards require "regular and effective communication and consultation" by the organization with "stakeholders", compliance with human rights legislation as a minimum, and reaching out and

¹³⁶ Kalynka, Karen. (April 29, 2021). Conservation in a changing landscape: An overview of land trusts in Canada. *Land Trust Alliance of British Columbia, Quarterly Webinar Series*. The results are from a national survey between 2016 and 2019, with 66 online surveys completed for this question.

See presentation at: <https://ltabc.ca/programs/seminars-and-workshops/>

¹³⁷ Imagine Canada. (2018). *Standards Program for Canada's Charities & Non-Profits*. <https://boardvoice.ca/wp-content/uploads/2018/10/Imagine-Canada-Standards-Program-for-Charities-and-Non-Profits.pdf>

involving a “diverse volunteer base”¹³⁸. The standards do not specifically reference Indigenous communities or individuals and remain fairly general for application across multiple missions, sectors, and sizes of organizations across the country. Nonetheless, there is a basic requirement for organizations to engage with local communities, including Indigenous communities, and to promote and respect equality, diversity and inclusion of racialized and other minority groups.

The 2019 *Canadian Land Trust Standards and Practices* (CLTSP) are an adaptation of the U.S. Land Trust Alliance’s 2017 *Land Trust Standards and Practices* (USLTSP) and are licensed by the U.S. LTA to the Canadian Land Trust Alliance. These standards and practices address both the organizational and land securement dimensions of land trusts. Neither the older 2007 CLTSP nor the current 2017 USLTSP reference Indigenous Peoples, however expressed. Yet both speak to outreach and engagement generally through communications, evaluating partnerships, and keeping “neighbours and community leaders informed about its ownership and management of conservation properties”¹³⁹.

Despite being primarily an updating process based on the revised USLTSP and changes to Canadian legislation, the 2019 CLTSP are more explicit in referencing Indigenous interests. The current CLTSP elaborates on previous versions of the standards and practices by specifically including community engagement with Indigenous communities, “Indigenous” within technical expertise, and “Indigenous” in the types of conservation values¹⁴⁰. Of course, these elaborations would then extend more general Practices relating to engagement, expertise, values, plus other elements, to also apply to Indigenous communities and interests. They would also imply the establishment of relationships with local Indigenous communities, application of Indigenous knowledge when shared, and respect of protocols. These Practices also may influence additional aspects in the entire securement process, including project selection criteria, funding, securement tools, stewardship, future dealings, and transfers to future owners.

Notably, the 2019 CLTSP’s Introduction states that:

“The Canadian Land Trust Alliance acknowledges that emerging practices, such as engagement of Indigenous communities, may not have been fully explored or resolved under this revision. ... Given the very limited resources and time available to CLTA, the significant and emerging question of Indigenous community engagement could not be appropriately addressed at this time.”

¹³⁸ Imagine Canada, 2018 A10, D6 and E4, respectively.

¹³⁹ Canada Land Trust Alliance. (2005). *Canadian Land Trust Standards and Practices*, Practices 1C, 8H, and 12F (quoted). <http://olta.ca/wp-content/uploads/2013/03/CLT-Standards-Practices-Technical-Update-June-20071.pdf>

¹⁴⁰ Canada Land Trust Alliance. (2019). *Canadian Land Trust Standards and Practices*, Practices 1A, 1C, 9A2 and 12B(1)(a). https://cltstandardspracticesrevision.files.wordpress.com/2019/01/cltsp_2019_en_final.pdf

The Canadian Land Trust Alliance recognizes that, going forward, the manner in which land trusts engage with Indigenous communities is a high priority at the governance and operational levels of work undertaken by Canadian land trusts, and should be further explored. With this in mind, the CLTA encourages all Canadian land trusts to actively reach out to and engage with Indigenous partners when engaging in the land conservation activities.

This sets a clear direction, and also suggests that future CLTSP iterations will likely have more to say about land trust and Indigenous community relations. Indeed, as international practices for Private Protected Areas and other conservation measures evolve, these will increasingly influence land trust community standards and practices. The CLTSP recognizes the advantage to “maintain alignment of industry practices in Canada with the most current, internationally-recognized standards”. Certainly, the evolution of these standards and practices has moved from “outreach” to “engage” communities but not yet to the international obligation to seek the free, prior and informed consent (FPIC) of Indigenous communities.

As an example of directions that might emerge, comments on a later draft of the CLTSP had made recommendations regarding Indigenous relationships, rights and protocols, managing lands for harvesting and ceremonial/cultural uses, cultural practices, site naming, fostering diversity, and applying Indigenous knowledge, among others.

The CLTSP’s Introduction recognizes that implementing the CLTSP “helps land trusts uphold public trust and build strong and effective land conservation programs”. While its directions for Indigenous relations are largely voluntary for land trusts, land trusts are increasingly required to state their adoption or steps toward implementation of the CLTSP for significant purposes, including enabling members of provincial land trust organizations¹⁴¹ to become accredited under developing national programs¹⁴², receive funding from Crown and non-Crown sources, and be able to benefit from incentive programs, such as the Ecological Gifts Program.¹⁴³

Accordingly, the new and evolving Practices for Indigenous relations have tangible and significant implications for land trusts moving forward. To “engage” effectively, land trusts must thus have cross-cultural knowledge, build relationships and pursue meaningful discussions, as well as incorporate Indigenous knowledge and related expertise. The trend is moving towards more detailed standards and practices over time, with significant potential for further elaboration, partnerships and conservation outcomes.

¹⁴¹ For example, the Ontario Land Trust Alliance, the Land Trust Alliance of British Columbia, and Québec’s Réseau de milieux naturels protégés.

¹⁴² See ongoing developments towards a national accreditation program for land trusts by the Centre for Land Conservation (formerly, the Canadian Land Trust Alliance).

¹⁴³ “The application package [for eligible recipients] must include: ... evidence that the organization has adopted, or has committed to adopt, national or provincial guidelines to direct its land acquisition and management practices”. This requirement is also noted in the Canadian Ecological Gifts Program Handbook (Environment and Climate Change Canada. (2021). *The Canadian Ecological Gifts Program Handbook: a Legacy for Tomorrow, a Tax Break for Today* at 12. publications.gc.ca/pub?id=9.885823&sl=0

There are risks of inaction or indifference to these evolving practices. These risks can range from getting a relationship off on the wrong foot due to an issue arising at the outset, to damage to trust and relationships in a working partnership. Without relationships and engagement, sensitive issues such as questions about an organization's process or access to secured lands could become difficult and public, damaging the group's Indigenous and other public profile and support by donors and volunteers. In extreme situations, this may leave the title and access to or stewardship of privately conserved lands uncertain, such as resulted in the *Bartleman* and *Hunt* cases noted earlier. Unresolved land claims can further create friction or access issues between settler and Indigenous communities, such as has also occurred in central and eastern Ontario and in Nova Scotia. Further, sustained inaction in addressing conservation community standards could eventually lead to disqualification from conservation associations and program availability.

Best Practices

There is a growing array of information on best practices for engagement among Crown governments, agencies, civil organizations and Indigenous communities; references to some of these are found in Appendix C. These best practices may be focused on government responsibilities, project proponent roles, the requirements of Indigenous nations or individual communities, or particular types of projects or subject areas.

The Indigenous Circle of Experts emphasized the concepts of “two-eyed seeing” and “ethical space” as ways to bring these interests together in a good way. As Mi'kmaq Elder Albert Marshall has put it, the first concept refers to “learning to see from one eye with the strengths of Indigenous knowledges and ways of knowing, and from the other eye with the strengths of western knowledges and ways of knowing – and learning to use both of these eyes together for the benefit of all.” This means respecting, valuing and equally applying both ways of knowing. This approach can inform how we gather and consider information (experience and research), how we interpret and apply it (analysis), and the systems we put in place to guide our activities (planning and determining responsibilities).¹⁴⁴

The Conservation through Reconciliation Partnership (CRP) is leading research towards the development of knowledge, capacity and relationships to support Indigenous leadership in conservation, and to build respectful partnerships between Indigenous and Crown governments and public and private conservation organizations. The work of the CRP is informed by the recommendations of the Indigenous Circle of Experts to integrate the concepts of Two-Eyed Seeing, where Indigenous and non-Indigenous knowledge systems are understood to both offer insights and values towards identifying solutions, as well as Ethical Space, a methodology for partnerships to support the transformation of conservation by creating the conditions for ethical collaboration between Indigenous and non-Indigenous partners.¹⁴⁵

¹⁴⁴ Indigenous Circle of Experts, 2018 at 15-18, 56-57.

¹⁴⁵ For more information about the Conservation through Reconciliation Partnership see <https://conservation-reconciliation.ca>

Research conducted within the CRP embraces a wider context, one that enables Indigenous and non-Indigenous knowledge systems, and in which practitioners consider their own languages, worldviews, cultures, legal traditions, and protocols in parallel, and then come together to collaborate, advise, and have dialogue; it can also cross-validate the other's decisions without the need to corroborate them for validity.¹⁴⁶ The focus of ethical space is to create a place for knowledge systems to interact with mutual respect, kindness, generosity and other basic values and principles. Within ethical space, all knowledge systems are considered to have equal standing, which is to say that no single knowledge system is assumed to have more weight or legitimacy than another.

Fundamentally, ethical space is not about “consultation”, but is a practice that relies on cross-validation, in which a decision is supported by the conclusions and considerations brought to the discussion by practitioners from both Indigenous and non-Indigenous knowledge systems and governance structures.¹⁴⁷ Ethical space is created through relationships at multiple levels among organizations and communities, framed by a wider legal and principled context. A principled approach to meeting in ethical space can provide a venue for conservation organizations and Indigenous communities to engage in more profound conversations and mutual learning opportunities around shared conservation goals, leading to more effective and respectful approaches to meeting those goals.

Even the best designed processes need to be flexible to address the particular circumstances, and to enable the proposal to become a shared goal as reflected in an agreement among the parties. Best practices and lessons learned include the following:¹⁴⁸

- **Good Relationships:**

- Trust, goodwill, commitment and transparency.

- **Values and Principles:**

- Mutual respect, act with honour, good faith, reconciliation.
- Transparency, accountability, timeliness.
- Consultation before decisions, give process adequate time, sufficient resources available, set out objectives and scope clearly, communicate back how feedback has been used.

¹⁴⁶ Indigenous Circle of Experts, 2018 at 16.

¹⁴⁷ Crowshoe, R, Littlechild, D. and Enns, E. (2020), “What is Ethical Space?” *Conservation through Reconciliation Partnership*. <https://www.youtube.com/watch?v=kjjiUi-5qra0>

¹⁴⁸ Compiled primarily from: Federation of Saskatchewan Indian Nations, Federation of Saskatchewan Indian Nations Consultation Policy, n.d.; Nova Scotia, Consultation with the Mi'maq of Nova Scotia, 2015; British Columbia, Building Relationships with First Nations, n.d.

- Remove barriers to participation: information to all participants, plain language, accessible and appropriate locations, alternative formats and media, financial support, in requested languages, offer interpreters and translation.
- **Process:**
 - Formal and informal protocols and practices.
 - Consultation does not necessarily mean concurrence or approval.
 - Phases: Consultation screening, preparation and research, engagement, identification of concerns, accommodation, decision, follow-up/monitoring.
 - Consultation plan: objectives, roles and responsibilities, meaningfully consider participants' contributions, identify in advance needed information and how it will be shared, managing communications, evaluation and feed-back mechanisms, document the process and progress.
 - Elements of engagement: information exchange, conducting studies, communication and relationship-building, meet with communities.
 - Methods: face-to-face, small groups, discussion paper with written input, questionnaires, interviews, internet discussions, surveys, public opinion polling, others as directed.
 - Knowledge: science and Indigenous knowledge studies.
 - Administration: processing requests for consultation, authorized representatives, document the process, review, and dispute resolution.
- **Other effective engagement practices:**
 - Build internal competencies and values.
 - Recognize capacity challenges.
 - Engage first, plan second.
 - Engage early, listen, be willing to adapt.

The Consultation Spectrum

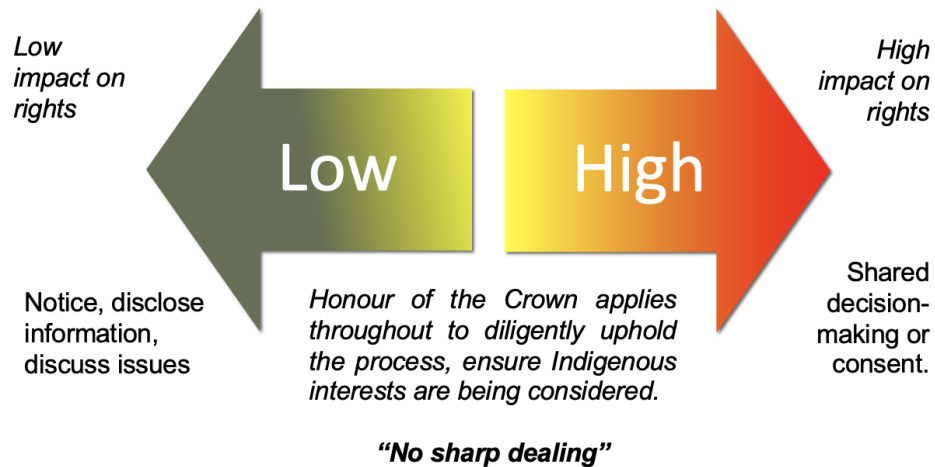


Figure 2: The Consultation Spectrum

Although the focus of this report until this point has largely been on consultation, the preceding discussion demonstrates the need to move towards a consent-based standard, imposing fuller responsibilities on private parties and project proponents. The consultation spectrum is shifting from asking simply whether consultation is required to seeking FPIC at the outset of a proposed project.

So how do conservation organizations adapt their securement practices to build respectful and appropriate relationships with Indigenous governments? How can these be related to the *Canadian Land Trust Standards and Practices* and other sectoral guidance? Some of these questions are explored briefly below, ranging from initial and minor to substantial and profound activities, with real examples.

Understandings and Relationships

(See CLT Standard and Practice 1C – Community Engagement)

- Identify the communities, key organizations and people in the geography of interest
 - Consider formally established Band Councils, Métis Locals, or other “official” leadership organizations as well as traditional leadership, and community organizations
 - Consider diverse elements of the community, such as Elders, youth, women, and two-spirited people
- Understand communities’ histories and needs
 - Creation stories, historic and current events
 - Community celebrations, challenges, priorities
- Develop relationships with the communities and individuals
 - Professional roles, personal connections
 - Attend community events

Examples include: collective efforts to conduct research on the Indigenous communities and treaties involved in a wide geographical area; reflecting diverse territories, treaties and relationships in land acknowledgements and in policy submissions; concerted efforts to attend local Indigenous celebrations or other public events; attending and hosting land trust training, speakers and conference sessions on Indigenous worldviews, cultures and practices; and sharing practices and lessons learned among land trusts.

Governance

(See CLT Standards 3 - Board Accountability, 4 - Conflict of Interest, and 7- Human Resources)

- Develop governance structures and procedures that interact well with Indigenous communities and interests
- Invest resources and time into diversity, equity and inclusion practices
 - Include cross-cultural and decolonial training
- Appropriately recruit Indigenous persons into the organization
 - Board, staff, volunteers, advisors, others
- Collaborate with and enable Indigenous organizations

Examples include: involving a former Chief, first on a management committee and then on the umbrella Trustees for the organization; having a joint management committee¹⁴⁹; and seeking Elders' advice, hiring Indigenous staff, and exploring ways to better reflect Indigenous interests in programs.

Planning

(See CLT Standards and Practices 1B - Mission, Planning and Evaluation, and 8 - Evaluating and Selecting Conservation Projects)

- Engage Indigenous communities from the start in planning activities
- Seek free, prior informed consent around major strategic plans, funding strategies, succession plans, and other major decisions
- Work with communities to identify land priorities, selection criteria
 - Consider cultural keystone species, cultural or sacred sites
- Appropriately incorporate Indigenous traditional knowledge
- Develop appropriate data management, access and mapping protocols
- Seek and work through community consultation protocols

Examples include: consulting with Indigenous advisors on developing directions for a land trust organization's new strategic plan; and processes and protocols to streamline private land securement consultations among several land trusts and a multi-First Nation treaty body.

Funding and Incentives

(See CLT Standards and Practices 2C – Tax Status, 5 - Fundraising, 6 – Financial Oversight, and 10 – Tax Benefits and Appraisals)

- Consider and develop collaborative funding opportunities with Indigenous communities
- Reflect on the availability and impacts of funding on Indigenous communities
- Honour and value Indigenous traditional knowledge and community members' time
- Seek funding and incentive program structures, eligibility and criteria that enable Indigenous organizations and uses to qualify
- Seek donors and other supporters for programs within the organization that are Indigenous-focused

¹⁴⁹ For example, a joint committee between Curve Lake First Nation and Ontario Parks for Kinomagewapkong ("The Teaching Rocks")/Petroglyphs Provincial Park.

Examples include: seeking First Nation funding support for a stewardship fund for a significant land acquisition project; and supporting a First Nation or Indigenous organization to obtain Qualified Donee status for income tax and donation purposes.

Securement and Transfer

(See CLT Standards and Practices 5C – Non-Conservation Real Property for Resale, and 9 - Ensuring Sound Transactions)

- Recognize and help address that Western land tenure systems and fragmented “ownership” and access are foreign to many Indigenous relationships with lands and waters
- Consider Indigenous interests in and activities for particular parcels, and reflect these in associated agreements (such as in the terms of conservation easement agreements)
- Educate and engage with land donors to encourage willingness to support Indigenous uses
- Secure lands and waters specifically to support Indigenous needs and priorities
- Consider co-ownership and backup conservation easement agreement holder roles for Indigenous organizations
- Consider support of or subsequent transfers of lands to Indigenous communities or organizations

Examples include: acquiring lands and implementing co-stewardship arrangements for sacred burial sites; incorporating Indigenous protocols and access arrangements into conservation easement agreements; funding Indigenous Guardianship programs.¹⁵⁰

Stewardship and Access

(See CLT Standards 11 – Conservation Agreement Stewardship, and 12 – Land Stewardship)

- Engage Indigenous communities and individuals in appropriate access to and uses of secured lands, including agreements
- Incorporate traditional territory, Indigenous community, appropriate knowledge systems and world views into management directions, such as management or work plans
- Consider naming, signage and other interpretation on sites that reflect the local Indigenous language and appropriate knowledge systems.

¹⁵⁰ The City of Kitchener, Ontario is engaging with Indigenous people around creation of ceremonial space in Victoria Park while, nearby, Wellington County is seeking funding for a new such ceremonial space at a site next to its County Museum and Archives. See: <https://kitchener.ctvnews.ca/land-back-camp-organizers-petitioning-cities-for-ceremony-land-paid-positions-for-indigenous-people-1.5023843> and <https://www.guelphtoday.com/wellington-county/wellington-county-seeking-grant-to-create-areas-first-indigenous-ceremony-space-3536001> Ontario Parks has transferred part of West Montreal River Provincial Park to the Matachewan First Nation. See: <https://ero.ontario.ca/notice/013-2951>

Examples include: reaching out to build closer relations and reflecting Indigenous site and plant names as well as Indigenous community background in management plans; Indigenous-led medicine walks; interpretation signs reflecting Indigenous knowledge and Indigenous language, with consent; working with Indigenous groups to decolonize land restoration through culturally appropriate approaches and engagements; funding Indigenous Guardianship programs.¹⁵¹

Towards Better Practices

While Indigenous communities, conservation organizations, geography and circumstances will vary, several experiences within the land trust community across Canada will help illustrate how such relationships and practices can be developed.

This experience, in part, emerges from the growing “land back”, land return or “repatriation/ rematriation” movement whereby Indigenous communities and their allies work to bring lands back under the jurisdiction and responsibility of Indigenous communities. This process has been attracting more public attention and interest, such as through CBC Radio’s 2017 “Unreserved” program. One episode featured a settler’s intention to donate her land to Alderville First Nation and spurred numerous correspondence back to the program from others interested in doing so, including individuals who had donated their lands, or had plans to do so, for these to become additions to reserves.¹⁵²

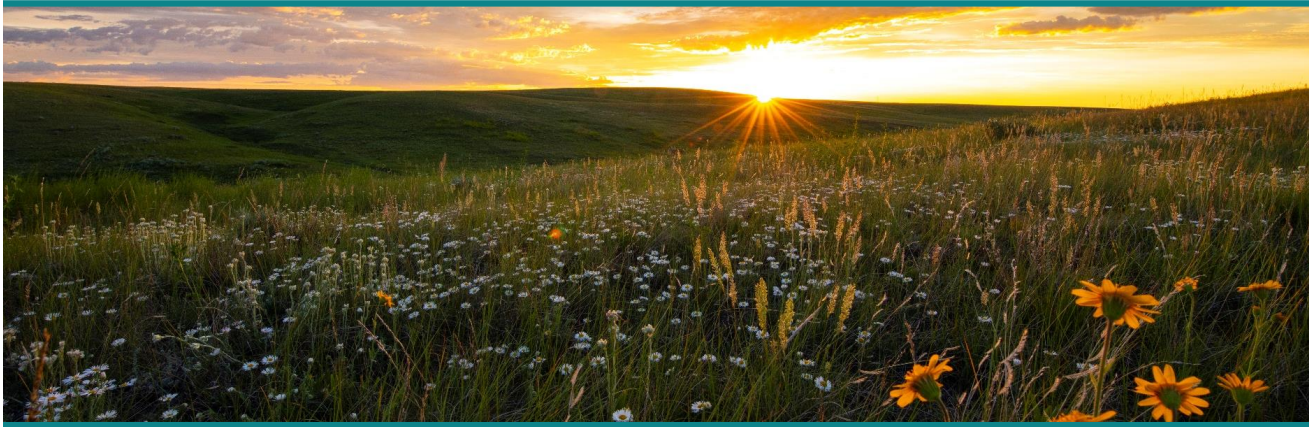
In a notable example, the Land Conservancy of British Columbia (TLC) purchased SISØENEM, an ecologically and culturally significant small island off the east coast of Vancouver Island, and then transferred the island to the W̱SÁNEĆ Leadership Council.¹⁵³ This example – perhaps the first such transfer in Canada – is one of the few examples identified in our research where a private land conservation organization has given land back to a First Nation in order to directly contribute towards reconciliation. We suggest that this example could be a step towards a new practice for land trusts in Canada – and that there is a very long way to go: A recent study of charitable giving in Canada noted that charitable donations to Indigenous governments and charities from all sources constituted only 0.05% of all funds granted in Canada. Indigenous organizations are receiving only \$1 for every \$178 granted to non-Indigenous recipients in Canada.¹⁵⁴

¹⁵¹ An example is the Indigenous Land Stewardship Circle, comprising elders, knowledge holders and other urban Indigenous community members, working in High Park, Toronto, Ontario, with the Parks, Forestry and Recreation Department. See: <https://www.cbc.ca/news/indigenous/rhiannon-johnson-1.4292341>

¹⁵² See Unreserved. (October 20, 2017). One woman’s plan to give back: ‘The land needs to be returned to Indigenous Peoples.’ *CBC Radio*. <https://www.cbc.ca/radio/unreserved/how-are-you-putting-reconciliation-into-action-1.4362219/one-woman-s-plan-to-give-back-the-land-needs-to-be-returned-to-indigenous-peoples-1.4363152>; and <https://www.tvo.org/author/chantal-braganza>

¹⁵³ The island name roughly translates as “sitting out for pleasure of the weather” and has also been known as Halibut Island. See: <http://conservancy.bc.ca/2021/02/halibut-island/>

¹⁵⁴ Redsky, Sharon et al. (May 31, 2021). Canadian charities giving to Indigenous Qualified Donees—2018. <https://www.canadiancharitylaw.ca/wp-content/uploads/2021/05/Canadian-charities-giving-to-Indigenous-Charities-and-Qualified-Donees-2018.pdf>



A photo of the sun setting on a field of wildflowers. This is Old Man on His Back Prairie and Heritage Conservation Area in southern Saskatchewan. The Nature Conservancy of Canada (NCC) has been engaging with a group of Indigenous advisors from local nations to develop a Bison Management Plan for these lands, which are part of the traditional territories of the Niitsitapi, Nakoda, Dakota, Lakota, Anishnaabe, and Nêhiyawak Peoples as well as the homeland of the Métis. Photo Credit: Jason Bantle.

Section 4: Beyond Consultation

As the extensive discussion of the evolution of the doctrines of consultation and accommodation and the treatment of Aboriginal rights and title in relation to private lands by the courts makes clear, the foundational questions of how to reconcile Crown sovereignty and Indigenous rights are difficult for Canadian courts. Judges have typically demonstrated significant restraint in granting declarations that might have consequences beyond the judicial recognition of Indigenous rights. As the Supreme Court wryly observed in *Clyde River*:

“true reconciliation is rarely, if ever, achieved in courtrooms.”¹⁵⁵

This section deals with the evolution of Canadian law beyond consultation and accommodation towards the recognition of Indigenous jurisdictions as part of Canada’s confederation. These changes are not occurring through the courts but are coming about as a result of decades of political work by Indigenous Peoples and their allies, the growing scope of recognition for Indigenous authorities, and through a growing acceptance by Crown governments in Canada of the need for a renewed relationship with Indigenous Peoples based on recognition of Indigenous governments and jurisdictions. Increasingly, it is untenable to continue to ignore Indigenous jurisdiction, including jurisdictions over land and resource management. As the Federal Court recently stated in *Pastion v Dene Tha’ First Nation* that:

“Indigenous legal traditions are among Canada’s legal traditions. They form part of the law of the land.”¹⁵⁶

¹⁵⁵ *Clyde River* at para. 24, quoted with approval in *Mikisew Cree* at para. 142.

¹⁵⁶ [2018] 4 FCR 467, at para 8.

Article 34 of the United Nations Declaration on the Rights of Indigenous Peoples also declares:

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

In 2016, Canada formally adopted the Declaration, and enacted legislation intended to bring laws and policies into alignment with the *Declaration* in 2021. Canada has also established formal principles to guide this changing relationship with Indigenous Peoples. These “10 Principles” proclaim that “The Government of Canada is committed to achieving reconciliation with Indigenous Peoples through a renewed, nation-to-nation, government-to-government, and Inuit-Crown relationship based on recognition of rights, respect, co-operation, and partnership as the foundation for transformative change.”¹⁵⁷ In the *10 Principles*, Canada expressly acknowledges Indigenous governments as “part of Canada’s evolving system of cooperative federalism and distinct orders of government” and a “unique connection to and constitutionally protected interest in their lands, including decision-making, governance, jurisdiction, legal traditions, and fiscal relations associated with those lands.”¹⁵⁸

This changing relationship is most evident in areas subject to modern treaties or self-government agreements. In such areas, Canada has formally acknowledged Indigenous governments as having the right to make laws for the governance and use of lands and resources. Indigenous laws made pursuant to modern treaties and self-government agreements are fully recognized as being equal in authority and effectiveness to those made by public governments, and typically operate concurrently with federal and provincial or territorial laws within a treaty or settlement area. Indigenous governance is recognized in the application of First Nation laws on reserve lands under the *First Nations Land Management Act*, as well as through other forms of agreement or constructive arrangements between public governments and Indigenous Peoples.

In these contexts, Indigenous governments will have either the exclusive authority or significant influence in how and where private lands may be acquired or transferred and will either make or significantly influence laws setting standards and regulations for how such lands may be used.

Even in areas where the full recognition of Indigenous jurisdictions through modern treaties and self-government institutions has not yet occurred, Crown governments and Indigenous Peoples are increasingly engaged as partners and co-managers in conservation. This is particularly evident in the establishment of Indigenous Protected and Conserved Areas (“IPCAs”), defined in 2018 by the Indigenous Circle of Experts (ICE) as “lands and waters where Indigenous governments have the primary role in protecting and conserving ecosystems through

¹⁵⁷ Department of Justice. (2018). *Principles Respecting the Government of Canada’s Relationship with Indigenous Peoples*. <https://www.justice.gc.ca/eng/csj-sjc/principles.pdf> (“10 Principles”)

¹⁵⁸ 10 Principles, at Principal 4.

Indigenous laws, governance and knowledge systems.”¹⁵⁹ Over the past several years, IPCAs have emerged as a primary mechanism for achieving Canada’s conservation goals.

Canada is not unique in this respect. There is also growing global consensus that Indigenous Peoples’ millennia-long experiences of governing their lands and waters leads to more effective conservation actions than those of state-based governments. As a recent United Nations report notes:

“Nature is generally declining less rapidly in indigenous Peoples’ land than in other lands, but is nevertheless declining, as is the knowledge of how to manage it.”¹⁶⁰

For private conservation organizations, the changing relationship between public governments and Indigenous Peoples, and the growing recognition of Indigenous governance institutions and jurisdictions, represents an opportunity to learn from and partner with Indigenous Peoples about how to improve and better direct conservation efforts, including in the securement of conservation lands. Leadership within the conservation sector, especially when combined with effective partnerships with Crown governments, can give full scope to effective conservation action involving Indigenous governments as full participants.

There is no principled basis for private land conservation organizations to operate as though Indigenous governments have no role in relation to private lands. We suggest the starting point for decisions about the securement or management of private conservation lands is not “whether there is a duty to consult”, but rather, “how to meaningfully engage with Indigenous governments and respect indigenous jurisdictions” so that respectful, equitable and effective conservation outcomes can be achieved.

There may have never been a better time and opportunity for the private land conservation sector to deliberately develop policies and protocols for directly seeking the free, prior and informed consent of affected Indigenous Peoples in private land conservation work. Such an approach provides far greater scope, opportunity and incentive for all parties to design a modern private land conservation regime that takes a principled and purposive approach to recognizing that Aboriginal rights and title exist and can be exercised in a manner that supports and sustains conservation objectives.

This approach is a better alternative to operating under the previous status quo, in which Aboriginal rights and title are simply assumed not to exist until proven. As noted in the previous discussion, the legal uncertainties and political controversies associated with inadequate consultation and accommodation or the failure to recognize Aboriginal rights and title, are largely incompatible with the long-term interests of private land conservation organizations involved in the securement and stewardship of conservation lands.

¹⁵⁹ Indigenous Circle of Experts, 2018 at 35.

¹⁶⁰ Diaz, S. et al. (2019). The Global Assessment Report on Biodiversity and Ecosystem Services: Summary for Policymakers. *Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services Secretariate* at 14.
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Appendix A: Research Questions

The following research questions were identified to help frame and inform this paper:

INDIGENOUS CONSULTATION AND ENGAGEMENT IN PRIVATE LAND ACQUISITION, TRANSFER AND MANAGEMENT BY NON-GOVERNMENTAL ORGANIZATIONS

Consultation Obligations for Land Securement

- i. What is the current requirement for private, non-governmental conservation organizations (NGOs) to consult with Indigenous Peoples when acquiring interests in land for conservation purposes? Does this requirement change when the land in question is:
 - o in an area covered by a treaty (historic and contemporary);
 - o in an area not covered by a treaty where Indigenous People assert rights and potentially title;
 - o in an area under active negotiation (whether as part of a treaty or other constructive agreement);
 - o or in an area where there is dispute between Indigenous People and Crown governments regarding the interpretation of a treaty or other constructive agreement (e.g., Peace and Friendship Treaties, Douglas Treaties)?
 - o less than fee simple title (an easement, for example)
- ii. If there is a requirement or commitment for NGOs to consult with Indigenous People, how does this differ from the Crown's "Duty to Consult"?
- iii. Does that requirement to consult on the acquisition or management of fee simple lands change at all if funds (all or in part) used to acquire those lands are provided by a Crown government?
- iv. Is there any requirement to consult if fee simple land held by NGO is transferred to:
 - i. a Crown government;
 - ii. a non-governmental entity (e.g., a local land trust)?
- v. Are there any relevant differences in such consultation requirements to note?

Consultation Obligations for Land Management

- i. What is the current requirement for NGOs to consult with Indigenous Peoples when managing fee simple land for conservation purposes?

- ii. Is there a requirement to consult if acquisition or securement actions have an impact on species protected under the *Species at Risk Act*?

Beyond Consultation and Best Practices

- i. Beyond a requirement to consult, how should NGOs account for national or international guidance such as UNDRIP and the TRC's *Calls to Action* in their work?
- ii. If there is a requirement or a commitment for NGOs to consult, what are the best practices for accommodation for non-governmental organizations?
- iii. Whether as a requirement or commitment, what are the best practices for when engaging with an Indigenous group?
- iv. Based on evolving case law and government policy, what does the future look like regarding these types of requirements or commitments?

Appendix B: International Documents

The following provides a list of some applicable international documents related to private land conservation.

Convention on Biodiversity. (2011). Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) to the Convention on Biological Diversity - Text and Annex. *Secretariat of the Convention on Biological Diversity*. Montreal. <https://www.cbd.int/abs/>

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Appendix D: Figure 1 Mapping Methods

In Figure 1, privately protected areas and Indigenous lands were mapped on a 10 km grid scale level for Southern Canada. This map includes:

- Privately protected areas (PPA) include Fee Simple and Conservation Agreements/Easements, both sole and joint ownership (where data existed). (Sources: Nature Conservancy of Canada and Environment and Climate Change Canada).
- Indigenous lands include reserves, land claims and other Indigenous lands (Source: NRCan):
 - Reserves include surrendered lands or a reserve, as defined in the Indian Act (this definition excludes Indian Settlements and Indian Communities); and Sechelt lands
 - Land Claim Settlement Lands include Category IA land or Category IA-N land, as defined in the Cree-Naskapi (of Quebec) Act, chapter 18 of the Statutes of Canada, 1984
 - Other Lands include Lands in the Kanesatake Mohawk interim land base, as defined in the Kanesatake Mohawk Interim Land Base Governance Act, other than the lands known as Doncaster Reserve No. 17.

To improve the visualization at the scale, the hectares of PPA and Indigenous lands were summarized at the grid level and mapped based on majority (i.e., whichever category had the highest total amount of hectares within each grid square).

- The inset map of Prince Edward Island (PEI) shows the actual boundaries of PPA and Indigenous lands in relation to the 10 km grid scale.
- The representation PPA and Indigenous lands on the map at the 10 km are over inflated (as seen in inset map of PEI in relation to Canada-wide map) and do not reflect the true areas at this scale.

Mapping sources are listed in the map and also in the spreadsheet along with processing steps. Area summaries in spreadsheet calculated using true areas (not 10km grid summaries).

Mapping Methods:

1. Merged and dissolved NCC Fee Simple and Conservation Agreements (Sole and Joint Ownership) properties with privately protected areas from CPCAD
2. Intersected with the 10 km grid squares for Canada
3. Calculated hectares of protected area
4. Summarized the total hectares of protected area by NCC and CPCAD per grid square
5. Summarized the total hectares per grid from the ECCC Private Conservation Lands 10 km Square Grid data

6. Joined both summary tables to the 10 km Square Grid dataset for all of Canada
7. Calculate the final hectares protected per 10 km grid square by assigning the higher (majority) value based on the NCC/CPCAD or ECCC total
8. Dissolved aboriginal lands by jurisdiction(s) to remove any overlap; for those in more than one jurisdiction, split by provincial boundary then calculated and summarized the hectares
9. Calculated hectares of aboriginal land
10. Summarized the total hectares of aboriginal lands by province (values are reported above)
11. Intersected with the 10 km grid squares for Canada
12. Calculated hectares of aboriginal land
13. Summarized the total hectares of aboriginal land per grid square
14. Classified each grid square as private protected area (PPA) or aboriginal land based on the higher (majority) value within.

Bills and Legislation

C-15, An Act respecting the *United Nations Declaration on the Rights of Indigenous Peoples*.
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Conservation Authorities Act, R.S.O. 1990, c. C.27.

Conservation Easements Act, S.N.S. 2001, c. 28.

Land Title Act, R.S.B.C. 1996, c. 250.

Land Titles Act, R.S.A. 2000, c. L-4.

Natural Areas Protection Act, R.S.P.E.I. 1988, c. N-2.

Natural Heritage Conservation Act, C.Q.L.R., c. C-61.01.

NS Reg 141-2006, *Abraham Lake Nature Reserve Ecological Site Designation* s 14 c 438.
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Protected Natural Areas Act, S.N.B. 2003, c. P-19.01.

Special Places Protection Act, R.S.N.S. 1989, c. 438.

Wilderness Areas Protection Act, S.N.S. 1998, c. 27.

Case Law

114957 Canada Ltée (Spraytech, Société d'arrosage) v Hudson (Town) [2001] 2 SCR 241.

Baker v Canada (Minister of Citizenship and Immigration) [1999] 2 SCR 817.

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Chippewas of Sarnia Band v. Canada (Attorney General) [2000] CanLII 16991 (Ont CA).

Chippewas of the Thames First Nation v Enbridge Pipelines [2017] SCC 41

Clyde River (Hamlet) v Petroleum Geo-Services Inc [2017] 1 SCR 1069.

Cowichan Tribes v Canada (Attorney General) [2017] BCSC 1575 (CanLII).

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Gill v Bucholtz [2009] BCCA 137.

James Smith Indian Band v Saskatchewan (Master of Titles) [1995] 6 WWR 158 (Sask CA).

Kwikwetlem First Nation v British Columbia [2021] BCSC 436 (CanLII).

Martin v New Brunswick [2016] NQBQ.

Mikisew Cree First Nation v Canada (Minister of Canadian Heritage) [2005] 3 SCR 388.

Musqueam Indian Band v Richmond (City) [2005] BCJ No 1636 (BCSC).

Nova Scotia (Aboriginal Affairs) v Pictou Landing First Nation [2019] NSCA 75.

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R v Bartleman [1984] 3 CNLR 114 (BCCA).

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R v White and Bob [1964] BCJ No 212 (BCCA).

Re Paulette et al. and Registrar of Titles (No. 2) [1973] CanLII 1298 (NWT SC).

References re Greenhouse Gas Pollution Pricing Act [2021] SCC 11.

Rio Tinto Alcan Inc v Carrier Sekani Tribal Council [2010] 2 SCR 650.

Saanichton Marina Ltd v Tsawout Indian Band [1989] BCJ No 563 (BCCA).

Skeetchstn Indian Band and Secwepemc Aboriginal Nation v Registrar of Land Titles, Kamloops [2000] BCCA 525.

Squamish Nation v British Columbia (Minister of Community, Sport and Cultural Development) [2014] BCSC 991.

Taku River Tlingit First Nation v British Columbia (Project Assessment Director) [2004] 3 SCR 550.

Taseko Mines Limited v Canada (Environment) [2017] FC 1100.

Tsilhqot'in Nation v. British Columbia [2014] SCC 44.

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APPENDIX G

VALUE STATEMENT - OAK RIDGES MORaine LAND TRUST



Value Statement - Oak Ridges Moraine Land Trust

Committed to honouring and stewarding the profound cultural, ecological, and spiritual significance of the Oak Ridges Moraine, the Land Trust embraces a sacred partnership with Indigenous Communities. We pledge to engage in respectful, reciprocal, and meaningful collaborations, guided by Indigenous wisdom and knowledge, to ensure the preservation and restoration of the land's integrity for present and future generations. Together, we uphold traditions, nurture biodiversity, and forge a harmonious relationship between people and nature, fostering a legacy of shared respect, understanding, and interconnectedness.

We recognize the path forward must be walked together with courage, respect and dignity. We present a list of potential programs that may provide opportunities for us to engage with you and other Indigenous Communities and Peoples across the Oak Ridges Moraine. Through these programs, the Oak Ridges Moraine Land Trust hopes to demonstrate our commitment to collaborating with local Indigenous Communities to protect, restore, and celebrate the cultural and ecological heritage of the Moraine.

This document is a living document intended to be adaptive to reflect the dynamic relationship that we have with each other and with the land.

1. Traditional Ecological Knowledge Sharing: We warmly invite you, as an Indigenous individual, to be part of traditional ecological knowledge sharing through our various programs. We will create ethical space for esteemed Indigenous Elders, Knowledge Carriers, and members of your Community to share your invaluable traditional ecological wisdom with a broader audience. Through interactive workshops, informative seminars, and engaging sessions, we will support to facilitate the exchange of insights that encompass sustainable land relationships and biodiversity.

2. Cultural Heritage Preservation: Your ancestral heritage and modern practices are of great significance. We are dedicated to honouring and protecting sacred sites and landmarks on and near the Oak Ridges Moraine. We extend an invitation to you, as a member of the local Indigenous population, to identify areas of cultural importance on or near the Moraine which can be incorporated for prioritization of the lands we seek to protect. Ensure tangible and intangible cultural heritage is safeguarded. In this regard, Indigenous Communities and Elders are seen as key holders/carriers of knowledge systems, and their wishes were always respected when undertaking mapping and subsequent dissemination of the information they imparted. It is important to establish a way that traditional knowledge can be stored and transmitted to the next generation before that knowledge becomes lost.

3. Land Stewardship and Habitat Restoration: We recognize your deep connection to the land, and we invite you to actively participate in our Land Stewardship and Habitat Restoration initiatives. These projects offer you, as an Indigenous Community member, a chance to play a vital role in caring for and restoring the Moraine's ecosystems by collaboratively protecting and nurturing habitats build a strong sense of connection and responsibility for the land we share collectively.

4. Collaborative Land Relationship Practices: As an Indigenous Community member, your insights are integral to collaborative land relationship planning for our protected Nature Reserves. We welcome you to contribute your cultural values and priorities to the development of these plans, ensuring that land relationship practices resonate with your beliefs. Together, we will work towards a sustainable coexistence, harmonizing human activities with the environment.

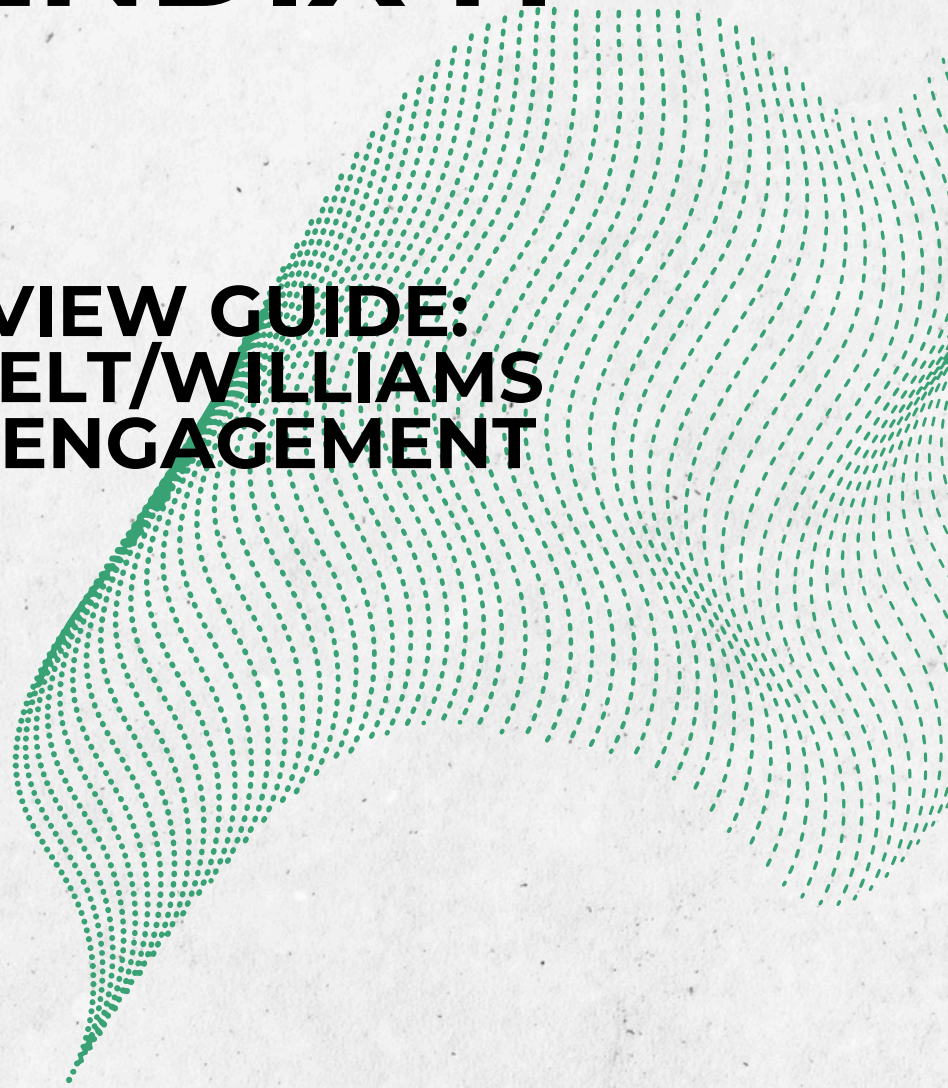
5. Education Programs: Our education programs offer a unique opportunity for Indigenous and non-Indigenous individuals to engage deeply with the Moraine. As an Indigenous person, you are encouraged to partake in our outdoor experiences, environmental education, and culturally enriching workshops. By participating, programs may provide an opportunity to strengthen your connection to both the land and your fellow community members, fostering a shared appreciation for these cherished landscapes.

6. Rights Holders Access to Protected Nature Reserves: We extend an invitation to Indigenous Peoples, honoring the deep-rooted connections you have with the land. We are committed to creating spaces where you can practice traditional, gathering and harvesting as well as foster meaningful nature connections. Our private nature reserves would be available for you to engage in activities that are part of your heritage and have been for generations.

We believe in the importance of preserving and celebrating your cultural practices and aim to support the continuation of your traditions while safeguarding the rich biodiversity of the Oak Ridges Moraine. Your presence and contributions are valued, and together, we can ensure that these landscapes remain a sanctuary for both the natural world and the vibrant tapestry of Indigenous and non-Indigenous cultures.

APPENDIX H

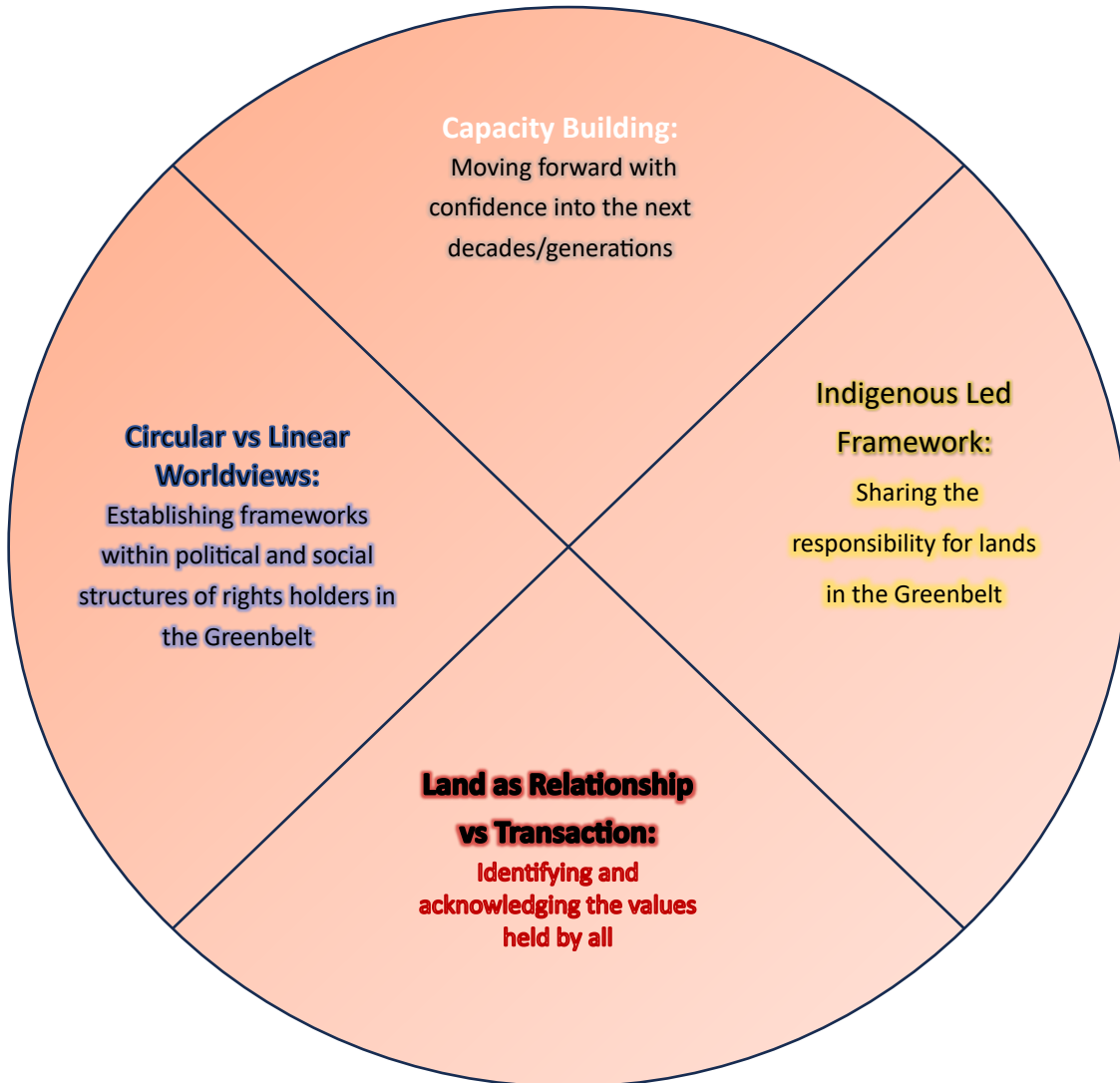
INTERVIEW GUIDE: GREENBELT/WILLIAMS TREATY ENGAGEMENT



Interview Guide

Greenbelt/Williams Treaty Engagement

Discussion Overview



Interview Guide

Indigenous Led Approach to Land Trust in Williams Treaty

- What would you like land holders in Williams Treaty to know about Indigenous ways of relating to land?

- What does “Land Back” mean to you?

- Other

Land as Relationship vs Land as Transaction

- What is your first memory of the land that you come from?

- What happens when land is given a value in dollars?

- What are the ways that land could be valued, other than monetary?

Circular vs Linear Perspectives

- How would you describe the differences between a linear and circular approach to living?

- When Canadians want to build a relationship with you/your community, what do you value in these relationships?

Capacity Building

- How do you see the current land trust model being improved?

- What do you need to learn about land trusts in Canada?

- What would you like Canadians to learn about Indigenous relationship to land?

Interview Details

Who

Where

When

NOTES