

Conservation Easements for Agriculture in Canada

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INTRODUCTION

Conservation Easements in Canada Evolve

Conservation easements have existed in Canada for almost two decades, and have been actively used by land trusts and local governments across the country. The development of this tool, especially in the early stages, drew heavily on the experience in the United States. Since that time, they have evolved both in policy and in practice.

Recently, both Ontario and Alberta have amended their conservation easement legislation to allow for a new purpose – the conservation of agricultural land. These modifications are very subtle. Neither jurisdiction created a new tool, both simply modified the existing legislation. The legal structure and foundation of conservation easements did not change in either jurisdiction.

What did change was the potential use of this old tool with a new purpose. The agricultural purpose allows for conservation of an entirely different type of landscape, one that focuses on a land use (agriculture), rather than an outcome (biodiversity, healthy wildlife, water quality, etc.). This has raised questions about what is the exact intent is of this new twist on an old tool, what the intent *should be*, who is likely to use it, how it might be used, and how it would dovetail with existing agri-business and agri-environmental policies.

Role of this Report

This report, and its underlying research, has three goals.

First, it outlines the current situation with regard to conservation easements for agriculture in Canada, and compares that to the situation in the United States. The United States has a similar background and context as Canada in this regard, but a much more robust experience.

Second, the report is intended to be a resource for any jurisdiction in Canada that either has, or is seeking to create, a legal and policy environment supportive of using conservation easements for agriculture.

Third, direction is provided specifically for Agriculture and Agri-Food Canada, as to the information valuable to this agency, and the role they might play in promoting the successful use of the CE tool for agriculture.

Structure of this Report

In order to accomplish those goals, the report (and the underlying research) has the following structure:

- Review of the legal and policy dimensions of conservation easements for agriculture in Alberta and Ontario;
- Review of how agricultural conservation easements have been applied in the United States;
- A summary and consolidation of the policy purposes for which conservation easements for agriculture have been used in North America;
- Brief description of the property tax implications of conservation easements for agriculture in Ontario and Alberta;
- Review of the community impact of conservation easements for agriculture in the United States;
- Brief consideration of the implications of conservation easements for agriculture on land ownership and management;
- Review of the capacity –related issues and opportunities for the organizations who may step forward to use conservation easements for agriculture;
- A brief consideration of some of the higher-level (federal) policy considerations for provinces enabling conservation easements for agriculture; and
- The authors’ conclusions and key recommendations for Agriculture and Agri-Food Canada.

A Note About Deliberate Terminology

This document uses the convention of “CEs for agriculture” or “conservation easements for agriculture” as opposed to “agricultural conservation easements.” Although the latter term is in common use across North America, the authors make this distinction intentionally for the following reason.

In some American jurisdictions, agricultural conservation easements are separate tools from conservation easements for other purposes. In these cases, they may be enabled in different pieces of legislation, and overseen by different government agencies. In some cases, they are programmatically defined, such as the common PACE, or Purchase of Agricultural Conservation Easement, programs.

As noted above, this is not the case in Alberta nor Ontario – there is only one conservation easement enabled legislatively. However, there are several allowable broad purposes in each case, of which conservation of agricultural land is only one. Otherwise, the legal basis is the same, the structure is fundamentally the same, and the eligible organizations are the same. The

authors, therefore, felt it important not to suggest that there were multiple conservation easement tools, and chose terminology to reflect that.

REVIEW OF CONSERVATION EASEMENTS FOR AGRICULTURE IN ALBERTA AND ONTARIO

Enabling Legislation

ALBERTA

Alberta Land Stewardship Act

Conservation easements have been legislatively enabled in Alberta since 1996, and since that time restricted to the purposes of supporting conservation of *biological diversity* and/or *natural scenic* values. In 2009, with the proclamation of the *Alberta Land Stewardship Act*, the Government of Alberta took the step of expanding Alberta's 13-year-old conservation easement provisions to include agriculture. The list of allowable purposes now includes:

- a) the protection, conservation and enhancement of the environment;
- b) the protection, conservation and enhancement of natural scenic or esthetic values;
- c) the protection, conservation and enhancement of **agricultural land or land for agricultural purposes**; [*authors' emphasis*]
- d) providing for any or all of the following uses of the land that are consistent with the purposes set out in clause (a), (b) or (c):
 - i. recreational use;
 - ii. open space use;
 - iii. environmental education use;
 - iv. use for research and scientific studies of natural ecosystems.

Though the wording changes were minor (the rest of the CE legislation remained largely unchanged), the implications were significant. There is little direction contained within the *Alberta Land Stewardship Act* as to the intent and possible applications of conservation easements for agricultural land. There also appears to be no articulated policy statement as to what the Government of Alberta's goal was in adding this expanded purpose. The Alberta Land Use Secretariat's reported intent, supported by feedback from Alberta Agriculture and Rural Development, is that conservation easements for agriculture would focus on cropland (M. Seiferling, personal communication).

ONTARIO

Conservation Land Act

Conservation easements have been legislatively enabled in Ontario since 1995. The purposes are similar, but not the same. Ontario's CE legislation has a more explicit list of the environmental values to be conserved (land, wildlife, water and watersheds). It also contains an open-ended ability for the regulations to add additional purposes. Although it contains no 'sub-purposes' other than access in support of the main purposes.

Similar to Alberta, the list of purposes was expanded in 2005 to include agriculture. The motivation for this change – as well as responding to a long-standing desire on the part of several interests to do so – was in part due to the potential that existing conservation easements might be more legally fragile if the matrix of landscape values they conserved included agriculture, but there was no formal legal backing for that purpose..

The list of allowable purposes now includes:

- a) for the conservation, maintenance, restoration or enhancement of all or a portion of the land or the wildlife on the land;
- b) for the protection of water quality and quantity, including protection of drinking water sources;
- c) for watershed protection and management;
- d) for the conservation, preservation or protection of the **land for agricultural purposes**; [*author's emphasis*]
- e) for the purposes prescribed by the regulations made under this Act; or
- f) for access to the land for the purposes referred to in clause (a), (b), (c), (d) or (e). 2006, c. 23, s. 35 (3).

Eligible holder requirements

Conservation easements are enabled by provincial legislation in both Alberta and Ontario. Each province's legislation describes who is eligible to receive and hold a conservation easement, and neither makes a distinction in eligibility based on the type of conservation easement (agricultural vs. environmental, scenic, wildlife, water, etc.). In Ontario's *Conservation Land Act*, eligible holders are called "conservation bodies"; in Alberta's *Alberta Land Stewardship Act*, eligible holders are called, "qualified organizations." Broadly speaking, qualified organizations / conservation bodies fall into two categories: government entities and charitable non-government organizations.

GOVERNMENT ENTITIES

Alberta

Governmental *qualified organizations* in Alberta include the Government of Alberta, provincial government agencies, and local government bodies.

Under the *Alberta Land Stewardship Act*, “government agency” is not defined (as it was in the previous conservation easement legislation, the *Environmental Protection and Enhancement Act*).

Local government bodies are defined elsewhere in the Act, and refer to the governing body of a:

- Municipality;
- Metis settlement council or the General Council;
- Irrigation District;
- Drainage District; or
- Housing Act Board.

The Regulations also allow the Stewardship Minister (currently the Minister of Sustainable Resource Development) to designate “any person or entity” as a local government body.

Ontario

Governmental *conservation bodies* in Ontario include the Government of Canada, the Government of Ontario, agencies of either of those governments, a band under the *Indian Act* (Canada), municipalities, and conservation authorities.

The references to the Governments of Ontario and Canada under the *Conservation Land Act* refer to the Crown in right of Canada or Ontario. Also included are agencies, boards and commissions of either government that have “the power to hold an interest in land.”

The determination of aboriginal bodies which may hold conservation easements in the province is deferred to the federal definitions under the Indian Act.

Local governments include any municipality and any of the province’s 36 conservation authorities.

CHARITABLE ORGANIZATIONS

The other category covered by the definitions of “qualified organization” and “conservation body” is that of charitable organization. Both the Ontario and Alberta legislation refer primarily to the status under the *Income Tax Act* (Canada) as the determinant of eligibility, but then add secondary requirements. Neither requires that the charitable organization be based or operate in the province.

Alberta

In Alberta, eligibility as a non-government *qualified organization* does not focus on charitable status alone. The organization must be a corporation (under the *Societies Act* or *Companies Act* in Alberta or the *Canada Corporations Act*), but must also satisfy the following criteria:

- A. has as one of its objects the acquisition and holding of interests in land for purposes that are substantially the same as any of the purposes for which a conservation easement may be granted,
- B. has in its constating instrument a requirement that, on or in contemplation of the winding-up of the corporation, all conservation easements that the corporation holds are to be transferred to another qualified organization, and
- C. is a registered charity within the meaning of the *Income Tax Act* (Canada).

Ontario

In Ontario, eligibility as a non-government *conservation body* focuses primarily on charitable status alone and corporate registration. The organization must also be a corporation under the *Corporations Act* in Ontario or the *Canada Corporations Act*. Although these organizations must also be a registered charity, Ontario also allows for a charitable foundation to be a *conservation body*.

Ontario's *Conservation Land Act* also contains a later provision that a conservation body assign any conservation easements on wind up (mandatorily to the Minister of Natural Resources), but does not make this a required facet of the organizational structure.

Similar to Alberta, Ontario allows for any person or body so designated under the Regulations to be a *conservation body*, but does not designate them a *local government body* as Alberta does.

Programs

LAND TRUSTS

One of the primary promotion and delivery agents of conservation easements in Canada has been land trusts. Since the first conservation easement legislation in 1995 the number of land trusts in Canada has increased dramatically where today there are more than 180 charitable organizations qualified to hold conservation easements.

Each land trust has its own specific conservation goals and objectives but in the broadest sense the goals they use conservation easements to achieve must fit within the purposes outlined in each province's conservation easement enabling legislation. Although only Ontario and Alberta name the protection of agricultural land as one of the allowable purposes, there are land trusts in other provinces that work to conserve agricultural lands but not necessarily through

conservation easements. Two examples are The Land Conservancy of British Columbia and The Genesis Conservancy in Saskatchewan.

Ontario

Ontario Farmland Trust is the one land trust in Ontario with the primary purpose of conserving agricultural land. They do this by working directly with landowners to protect properties that are agriculturally valuable and by educating people about the impact of farmland loss, the value of conserving it and the importance of stewardship. The Ontario Farmland Trust runs five main programs. Two are related to conservation easements for agriculture: Land Securement and Agricultural Gifts Program.

Through the Land Securement Program the land trust can either buy land or accept donations of land or conservation easements. Through the Agricultural Gifts Program they advocate for the creation of a federal or provincial program that offers beneficial tax treatment to landowners who donate land or conservation easements on agricultural land.

The Ontario Farmland Trust holds conservation easements on three farms – each of these properties has a working land component as well as natural features such as forested or wetland areas. All of the landowners who donated the conservation easements did so with the intention of the farmland being worked using sustainable practices and maintaining the natural features. While the Ontario Farmland Trust is advocating for an Agricultural Gifts Program, due to the ecological component of their current conservation easement lands the donors have been able to benefit from the EcoGifts program currently offered by the federal government.

Other land trusts in Ontario have protected agricultural land within a diverse landscape matrix that includes predominantly natural areas and perhaps smaller working areas that complement the natural areas. However no other land trusts do so with the specific intention of protecting the agricultural values or features of the property (L. McLaughlin, personal communication).

Alberta

Alberta's prairie, foothill and forest landscapes and the weather that influences them are quite different from that in Ontario and as such the agricultural uses are also different. Land holdings are often larger due to lower productivity per acre and agricultural products are more limited. In advance of the addition of "agricultural lands" to the possible purposes of a conservation easement, there have been conservation easements on agricultural properties to maintain the ecological function of grasslands. In particular one land trust, the Southern Alberta Land Trust Society has been working to protect an important type of agricultural land, rangelands, for its ecological and biodiversity values, not necessarily its agricultural value although that has been an indirect result as well.

Two other land trusts, the Foothills Land Trust and Western Sky Land Trust include the conservation of “agricultural land” in their mission statements. Neither of these organizations defines agriculture but their communication materials generally speak to the cultural, economic and environmental values of agricultural land. One can assume that they do not only mean native grasslands but also other food producing land, perhaps for its value as farmland, as open space, and / or for the ecosystem services they provide as compared to developed lands.

To date no land trust has completed an easement primarily for agricultural conservation purposes, but like the Ontario land trusts mentioned above, a number of conservation easements in the province have a portion of a larger property that has some kind of working agricultural component (e.g. hayland, cultivated land, green house, gardens, etc.) that is protected within the landscape matrix including habitat and other natural features.

MUNICIPALITIES

Conservation Easement legislation in every province (except Quebec and Prince Edward Island) names municipal governments as qualified holders of conservation easements. Municipalities are likely to be involved for slightly different reasons than land trusts. Regardless of which organization holds a conservation easement its purpose needs to meet the purposes outlined in the enabling legislation, however there are differences between the mandates of municipalities and land trusts. Municipalities are responsible to provide good government, provide services, and support safe, viable communities. Insofar as conservation lands contribute to this mandate municipalities may use conservation easements to achieve the above.

Ontario

As well as municipalities, Ontario has another layer of regional authority interested in conservation that can hold conservation easements – Conservation Authorities (CA). Conservation Authorities are named implementers in the Ontario *Planning Act* with areas of responsibility around watershed management including but not limited to wetlands, shorelines, point and non-point pollution sources, runoff, storm sewers, lakes and dams, etc. A conservation authority may have multiple municipal jurisdictions in its area. Municipal plans need to be consistent with and adhere to conservation authority plans. Conservation Authorities are generally not interested in holding conservation easements for agricultural purposes since agricultural land protection is not in their mandates. Municipalities and conservation authorities in Ontario often partner with land trusts or private conservation consultants to deliver conservation easements. One application of conservation easements by municipalities is to protect the balance of a property where a cluster subdivision is being built. The people interviewed for this report were unaware of a broad application of conservation easements for agricultural purposes by municipalities except as a part of an easement for ecological purposes.

Alberta

In Alberta, eleven rural municipalities now hold conservation easements, as well as both the Cities of Edmonton and Calgary, and several towns. The use of conservation easements in Alberta

municipalities is often in combination with a development application (e.g. applying a conservation easement in cluster subdivision approval). For the most part Alberta municipalities have been applying conservation easements in order to increase the land they can protect over and above what Environmental Reserve and Municipal Reserve can provide them. They have almost exclusively used them for environmental conservation. In 2010, the Municipal District of Foothills began to draft a conservation easement for agricultural purposes specifically for the remaining cultivated portion of a property where the landowners had requested a development on a small portion of the property. The conservation easement was never finished because the public consultation process resulted in the development application not going forward.

While a transaction has not yet occurred in Alberta, transfer of development credits programs offer a potential application for conservation easements for agricultural lands. If a municipality were to design a program to protect agricultural lands, a conservation easement for agricultural land could be registered when the development credits are transferred off the property.

REVIEW OF CONSERVATION EASEMENTS FOR AGRICULTURE IN COMPARABLE NORTH AMERICAN JURISDICTIONS

Legislation

As noted above, the United States has a much longer history of conservation easements than does Canada. The first statutes similar to the current conservation easement were enacted in the late 1800's, and the first modern use in the 1960's (see Brewer, 2003).

There is a much higher degree of standardization in the United States between state legislation, largely owing to the galvanizing role of the Land Trust Alliance. All states except North Dakota have adopted some form of conservation easement law. In 1981, National Conference of Commissioners on Uniform State Laws (NCCUSL) adopted the Uniform Conservation Easement Act, which operates as a template for all states wishing to use it. As of January 2009, 27 states and the District of Columbia had adopted some version of the UCEA. (Levin, 2010¹). Twenty-two states have not adopted it (mostly because they had pre-existing statutes). Most states that use it modify it in some respect, although three have taken it verbatim.

The UCEA provides no explicit direction on conservation easements with an agricultural purpose, but provides this template definition:

- "1. [DEFINITIONS].** As used in this Act, unless the context otherwise requires:
- (1) "Conservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which

¹ The reference source for the remainder of this section is Levin, 2010.

² Connecticut, Delaware, Maryland, Massachusetts, Michigan, New Jersey, New York, North Carolina, Pennsylvania, Vermont, Virginia, and Wisconsin.

³ In the study they use the term Purchase of Development Rights (PDR) to refer a paid

include retaining or protecting natural, scenic, or open-space values of real property, assuring its availability for *agricultural*, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.” [authors’ italics]

While reference is made to “agriculture” as an allowable purpose, there is no definition of “agriculture”. However, the wording is significant in that it says a CE purposes are for “retaining or protecting” ecological lands, but “assuring its availability” for agriculture.

With regard to enabling conservation easements for agriculture, four states (Illinois, Missouri, Montana and New Jersey) are silent on whether protecting agriculture is a qualified purpose for conservation easements. Massachusetts, New Hampshire and Ohio provide separate definitions and treatment for agricultural easements. In only some cases is this separate treatment accompanied by distinct provisions for each type of CE.

Most state CE legislation (including all UCEA states) require that a non-governmental holder’s purposes include some mention of conservation (though that may be in with several other purposes). California, Illinois, Washington and Wyoming require that specific purposes (such as for agriculture) are a primary purpose of the organization. Colorado, Iowa and Michigan contain no restrictions of this kind.

For specific examples of state-level conservation easement legislation, see Appendix 2.

Programs

The Land Trust Alliance in the United States reports that as of 2010, there were 1723 land trusts in that country, and they have conserved over 47 million acres of land (*2010 National Land Trust Census Report*). The 24 national land trusts were responsible for about two thirds of this total, while the remainder were state and local groups. The state and local groups currently have about 8.8 million acres under conservation easement.

The 2010 National Land Trust Census Report released by the Land Trust Alliance in the U.S. found that 61% of land trusts had the conservation of “Working farms and ranches” as a priority for conservation in the coming year.

The 2003 *National Assessment of Agricultural Easement Programs* (Sokolow and Zurbrugg, 2003) reviewed 46 “leading agricultural conservation easement programs.” Of these 46 programs, 6 were run by land trusts and 40 by local governments. Those 6 land trust programs were in

California and Colorado; the remaining programs were in the east², with the exception of the Washington programs.

Not dissimilar to Canada, the use of conservation easements specifically for agriculture has grown up in the northeast where there is smaller, more intensive croplands, and in the west, where the focus has been on rangelands. In cases across the United States, three factors have a strong influence on the nature of American programs.

First, the separateness of the agricultural conservation easement from the ecological conservation easement has led to a very different type of program development. As noted above, in some cases, state laws require users of the agricultural easement to be set up primarily for agricultural conservation purposes, but that is not the majority case. There is greater fluidity in that conservation easements of different types may be used by the same organization. Added to this is the matrix of conservation easement programs types (e.g., forest conservation easements), and variety of program operators (state, local government and non-government). So, for example, a single property may have a state-level conservation easement restricting forest harvest on the woodlots, a county-level conservation easement restricting sub-division for a transfer of development rights program, and a non-government conservation easement protecting the food-production capability of the parcel.

Second, local governments play a very strong role in conservation easement programs for agriculture. In the U.S., the majority of these programs are operated by counties.

Third, the funding available for conservation easements for agriculture is considerable. One of the most extensive funding mechanisms in the U.S. Farm Bill, which avoids providing subsidies for agriculture by providing grant support for the conservation of agricultural land. These federal and state programs provide millions of dollars each year to support Purchase of Agricultural Conservation Easement (or PACE) programs.

For specific examples of the missions of non-government agricultural conservation organizations, see Appendix 3.

PURPOSES FOR CONSERVATION EASEMENTS FOR AGRICULTURE

Need to Refine Purpose for Conservation Easements for Agriculture

The jurisdictions in Canada which have chosen to establish conservation easements for agriculture (Ontario and Alberta) did so by expanding the existing list of purposes. While administratively simple, the necessary dialogue on what was the desired goal piggybacked on the

² Connecticut, Delaware, Maryland, Massachusetts, Michigan, New Jersey, New York, North Carolina, Pennsylvania, Vermont, Virginia, and Wisconsin.

past dialogue. Those past dialogues were focused on ecological purposes, and not agricultural purposes, which have unique dimensions, several of which are listed below.

There is a need to establish a policy direction that indicates the purpose(s) for which a provincial government intends conservation easements for agriculture be used. This is based on at least the following reasons:

AGRICULTURE IS A LAND USE RATHER THAN AN OUTCOME

The allowable purposes of a conservation easement in Alberta and Ontario prior to the expansion to include agricultural lands were the protection, conservation or enhancement of the environment, natural scenic values, wildlife, water quality, watersheds, etc.. In both cases, there were effectively no references to the desired land uses, simply the outcome that needed to be promoted regardless of the land use.

With the expansion of the conservation easement purposes, a 'land use' has now been added – agriculture. The desired 'outcome' will need to be inferred, and without an accompanying policy statement from the provincial governments, those outcomes will likely be inferred in widely varying ways.

MOTIVATIONS FOR PROTECTING AGRICULTURAL LAND VARY GREATLY

There are a variety of motivations for protecting agricultural land. These reasons range from environmental to food production to cultural to agri-business considerations (see below). The breadth of these motivations is such that conflicts are very likely. For example, food production goals can conflict with watershed protection goals, economic stability goals can conflict with rural community preservation goals, etc.

All of these may be perfectly valid goals in the multi-faceted policy mix of a provincial government as a whole, but are challenging to balance on the narrow shoulders of one tool.

As well as the basis of conflict, this undefined breadth may lead to misalignment with provincial government goals, and confusion on the part of potential program participants.

AGRICULTURAL OPERATIONS VARY GREATLY

Not all agriculture is the same.

The implications and conservation needs of croplands vary from rangelands. The land use needs of market gardens vary dramatically from feedlots. Definitions of 'agriculture' may variously include production, processing and agri-business enterprises like tractor dealerships, or some unique mix of those. The 'family farm' conjures up idyllic images, but the reality is many family

farms are large, multi-operation corporations, whereas a bucolic farm house may be housing for farm labourers working for a large multi-national company.

Using the CEFA tool to support agricultural conservation programs requires understanding which features and facets of agriculture can be targeted by the tool.

NOT ALL PURPOSES ARE IN THE PUBLIC INTEREST; I.E., CHARITABLE

Depending on the intended purpose, the use of conservation easements to conserve agricultural lands may be considered non-charitable by the Canada Revenue Agency. There are strict rules as to what qualifies as a charitable activity, and equally strict rules on who qualifies as a charitable organization. Both the *Alberta Land Stewardship Act* and the *Conservation Land Act* require non-government holders of CEs to be charities. As charities, those groups are strictly limited in the actions they may or may not undertake. If the purposes for conservation easements for agriculture as laid out in policy are seen as supporting specific interests rather than the public interest, that could effectively remove land trusts' ability to use CEs for agriculture in that they could not issue receipts and could potentially be in violation of regulations regarding charitable activity.

More broadly, the traditional intent of conservation easements is, in general, a societal one, serving the public interest.

CONSERVATION EASEMENTS COULD OTHERWISE BE LESS ROBUST LEGALLY

Without a strong policy foundation, conservation easements may be legally more fragile. The capacity of any conservation easement to stand up to challenges is heavily dependent on the ability to show the connection between its list of land use restrictions and the conservation goal. A vagueness of purpose at the policy level would make this task very challenging, and could threaten not just an individual easement, but the viability of the tool as a whole.

AGRICULTURAL LAND TRUSTS WILL SEEK DIRECTION

There are currently no specifically-agricultural land trusts in Alberta, and only one in Ontario. There are several land trusts who pursue protection of agricultural lands within the context of their ecological mandate, and several who include conservation of agriculture as one of a suite of organizational goals. With the purposes of conservation easements being expanded to include agriculture, it is very likely that some existing land trusts will seek to likewise expand their use of the conservation easement tool. As well, new land trusts are likely to emerge which have a purely agricultural focus. In each of these cases, land trusts will approach the provincial government seeking clarification on the circumstances under which conservation easements for agriculture can be used.

ALIGNMENT IS NEEDED WITH OTHER PROVINCIAL LAND USE AND AGRICULTURAL GOALS

Conservation easements for agriculture are not the only tool that the Governments of Ontario and Alberta will use to pursue its agricultural and land use policies. Agricultural production and agri-business goals are reflected in the numerous policies, laws and programs guided by provincial agriculture ministries. If conservation easements for agriculture are to be effective as one of the implementation tools for these various policy initiatives, it will be important to understand the context of how they are intended to be used.

NOT ALL FACETS OF AGRICULTURE ARE UNDER THREAT FROM LAND USE CONVERSION

The conservation easement fundamentally is a tool to restrict land use conversions that threaten the valued landscapes of local communities. Those conversions might be wholesale conversions to another land use, or they might be incremental conversions as the result of certain land use practices. In terms of agriculture, the conservation easement is used primarily to address the diminution of the agricultural land base. There are other threats to agriculture than just loss of land. There needs to be a clear articulation of which perceived threats to the agricultural industry, lifestyle, community, practices, etc. can be – and are being – targeted with the use of conservation easements for agriculture land.

Why Conserve Agricultural Land with Conservation Easements for Agriculture

Although not exactly the same, the question of ‘why should we conserve agricultural land’ is at the base of the question of ‘what should be the policy goal of conservation easements for agriculture.’ The former is not a new question and it has been addressed by several agricultural conservation initiatives, laws, land trusts, and CE templates around the continent. Many of these draw from similar landscapes, legal structures, commodity markets, and community conservation issues to those faced in Ontario and Alberta.

Reviewing the myriad of farm and agricultural land protection rationales is like a shopping list of purposes from which you can choose those which match your specific policy purpose. The task of transitioning from the full list of agricultural land conservation purposes to appropriate purposes for CEs for agriculture in any specific province involves filtering through the existing policy landscape in that province, and clarifying the *policy* need.

To that end, there are a number of needs and circumstances (many reflected in the observations above) that define the space any provincial policy needs to occupy. These include:

- Ensuring private land conservation organizations can match their purposes to the purposes of the CE for agriculture tool;

- Distinguishing/combining/reconciling agricultural goals with non-agricultural goals (environmental, scenic, etc.);
- Distinguishing from 'Right-to-Farm' policies;
- Reconciling charitable and non-charitable purposes;
- Preventing unintentional structural flaws in the CE;
- Identifying requirements and options;
- Addressing needs/contributions of different agricultural operations (especially cropland, tender fruit lands, rangeland, etc.);
- Explicitly recognizing different components of 'agriculture' (production, processing, marketing, inputs);
- Reconciling food production and agri-business policies; and
- Coordinating with other conservation, land use planning and agriculture promotion policy initiatives.

HOW DO OTHER JURISDICTIONS APPROACH THE 'PURPOSE' CONUNDRUM?

There is no question that stating the policy purpose for conservation easements for agriculture is a challenge for every jurisdiction. A review of several approaches indicates there is no standardized method to doing so. However, the different approaches can be categorized and it is useful to do so to assess if one type of approach is most appropriate for a given province.

Mixing purposes

This is a very common approach, where ecological, cultural, scenic, open space, and/or other purposes are combined in one policy statement, one organization, or one conservation easement. The integration of these purposes is very mediagenic, but in practice the purposes can confound each other. The approaches least likely to see conflict are those that state explicitly how the purposes relate and what to do if they do conflict.

Defining farmland

Several policy statements and state laws define what farmland or agricultural land is. Some of these are specific to the point of identifying farms in terms of precise acreage, economic outputs, crops, and ownership structure. The question of the *purpose* is subsumed in the precise definition of what is being conserved. For example, a goal to control fragmentation of farmland is addressed by defining a farm as being greater than X acres.

Referencing other policies

In several cases, the policy, statute or directive will make reference to other policies, statutes or directives to provide clarity on aspects of the purpose. For example, this may occur when a land conservation statute leaves it to an agricultural practices statute to define farmland, an agricultural CE law refers to a policy initiative that defines threats to agriculture, a state level statute refers to purposes defined by a local government, or federal level tax law directs what is or is not a charitable purpose.

Deferring to the land trusts

In some cases the law or policy is directed at creating the architecture of the tool, but its use is left to the private land conservation organization. While policies around taxation, governance, etc. are still salient, whether the CEs for agriculture protect agri-business, land availability, or rural heritage is left to the mandate of the land trust.

WHERE DO OTHER JURISDICTIONS ARTICULATE THEIR CE FOR AGRICULTURE PURPOSES?

The policy trail for agricultural land conservation in American jurisdictions travels through several levels from state-level laws to parcel-specific CE documents. Depending on the jurisdiction, the articulation of the purpose of conserving agricultural land may appear at any one of the following levels:

State law

Some state-level governments in the United States have chosen to articulate the reason for conserving agricultural land directly within their statutes.

Land trust organizational purpose

In many cases, the purpose and associated use of the CE for agriculture tool is most directly reflected in the mission statement of the land trust. The law may be enabling only to the point of creating the opportunity for CEs to exist, but the purposes are defined on a case-by-case basis by each organization using them.

Conservation easement purpose

Many land trusts hold CEs for various purposes (recreation, ecology, agriculture, heritage, etc.). Often, they have a template CE for each type of CE, each with a set of purpose statements that define what that CE is intended to accomplish. The one for agricultural land conservation articulates a purpose that is different than those for their other types of CEs.

WHAT ARE THE POTENTIAL PURPOSES FOR CONSERVATION EASEMENTS FOR AGRICULTURE?

The above sections speak to how other jurisdictions approach *structuring* CEs for agricultural purpose; this section will summarize the range of potential purposes, then categorize them. The intent is to create a framework for analysis usable by any provincial jurisdiction.

The authors explored several laws, policy statements, analyses, organizational mandates, and conservation easement documents from Alberta, Ontario, and federally and from throughout the United States. Ultimately, a broad range of purposes currently underpinning agricultural land conservation efforts was inventoried.

Because no program – and certainly no policy statement – focuses on a single distinct purpose, the authors have gathered like purposes together to create *Purpose Categories*. The authors believe these broad categories are the most appropriate level for a provincial government to articulate a policy statement about the intended purpose of CEs for agriculture. Having said that, the sub-points are critical illustrations of the category, and they are drawn nearly verbatim from various CEs for agriculture and agricultural land conservation initiatives around the continent. Samples of both the CE for agriculture legislation and the relevant land trust mandates are included in the Appendices.

Economic

Purposes related to the financial and agri-business aspects of conserving agricultural land, which may be at a national, regional, local or farm-specific level. Examples include:

- National economy
- Jobs (regional)
- Agri-tourism
- Economic stability
- Reduce municipal servicing costs
- Regional/farm economy

Food Production

Purposes related to the production and provision of food, framed in a local to global context, perhaps with reference to security or health issues. Examples include:

- Local sourcing
- Quantity of farmland
- Quality farmland
- Limit dependence on foreign food
- Retain options (ag land bank)
- Healthy food

Culture

Purposes related to the traditional social fabric of a place, with reference to the historical farming community and/or the rural sense of place. Examples include:

- Sense of place
- Rural culture
- Heritage/history
- Family farms
- Rural/farm communities
- Opportunities for new generations

Open Space

Purposes related to density of settlement or development relative to adjacent or prevalent land uses, usually referring to low level of built structure, and an associated physical aesthetic. Examples include:

- Scenic beauty
- Recreation
- Thwart sprawl/indiscriminate land conversion
- Low density transportation networks

Environment

Purposes related to the ecological structure and function of an agricultural landscape, characterized in terms of site-specific features to regional interconnections. Examples include:

- Wildlife habitat
- Riparian areas
- Flood control
- Soil conservation
- Wetlands
- Water quality
- Watersheds
- Native vegetation

Practices

Purposes related to farming and ranching practices undertaken on an agricultural landscape, primarily with reference to those that have a limited or benign impact on the ecological function, sustainability of production, and/or human health benefits. Examples include:

- Organic
- Minimize negative effects
- Grazing
- Fresh food
- Low/no till

Conclusions and Recommendations

Given the existing tools available for private land conservation, and the philosophical intent of conservation easements, the authors feel that the most appropriate purpose categories for Canadian conservation easements for agricultural are environment, food production, and culture. That articulation might look like this:

1. *Sustainable agriculture* – protection of the lands where agricultural and environmental systems positively intersect;
2. *Food production* – conservation of the land’s food growing capacity; and
3. *Agricultural heritage* – preservation of the agricultural heritage and associated rural culture.

Because of the high potential for conflict between purposes, the following supporting recommendations are offered.

Promote “sustainable” agriculture

The basis of the *agri-environmental system* is a commitment to sustainable agriculture, and this should be actively promoted. As noted above, in all conversations where this dynamic tension was discussed, there was an assumption that CEs for agriculture would be used to protect agricultural land and operations which focused on environmental sustainability. For these reasons, any policy direction should make clear that the proposed three purpose categories are not of equal weight, and that where sustainable agriculture and food production or agricultural heritage purposes conflict, primacy is given to sustainable agriculture.

Focus on Cropland, Fruitland, and Tame Pasture

Conservation easements for ecological purposes are currently used across the country on agricultural lands with ecological values (regional wildlife movement, water recharge, wetlands, etc.). When looking at the range of agricultural land uses, conservation of cropland, fruitland, and tame pasture tend to slip through the cracks in the original conservation easement purposes, and should be considered as the focus of conservation easements for agriculture. It should be clear that the intent is not to convert these landscapes back to a native or more natural state, but rather to protect these landscapes from conversion to non-food-producing land uses, and to promote sustainable agriculture as described above.

Support mixed-purpose conservation easements

Despite the potential for conflict when mixing purposes (in particular, agricultural and environment), there is great value in this when done thoughtfully. The authors suggest that provinces and individual land trusts should facilitate (or at least not prevent) the development of conservation easements which achieve multiple purposes. Many existing private land conservation organizations already have mandates that span environmental, cultural, and agricultural purposes; it would expedite their work to ensure they could negotiate one CE, rather than three in these cases. The key to making this work without fatal conflict is ensuring there is a hierarchy in the purposes (as articulated above).

REVIEW OF PROPERTY TAXATION AND CONSERVATION EASEMENTS FOR AGRICULTURE

The potential property tax implications of any type of conservation land raises concerns, especially amongst local governments. In Canada, local governments raise revenue primarily through property tax and transfers from the provincial government. Not surprisingly, municipalities are particularly sensitive to any effort that could negatively affect that critical revenue stream.

Land trusts and conservation land owners have engaged in long and varied discussions about whether their lands should be assessed in a different way or taxed at a different rate. These dialogues have considered both fee simple and conservation easement lands. Different jurisdictions have adopted different philosophies and different methodologies for addressing how conservation lands are taxed. However, these discussions are almost irrelevant in the consideration of conservation easements for agriculture.

Across North America, local governments have adopted a differential assessment for agricultural lands, seeking to lower the tax burden on these lands. The arguments for this approach have focused on the discrepancy between agricultural land values and the annual rate of return on investment, and on the limited services demanded by the agricultural land use. These arguments have been very successful, and both Ontario and Alberta have taken this approach.

When considering the potential implications of the emerging conservation easement for agriculture on property tax revenues, the two relevant items are property *assessment* and property *taxation*. The revenues that accrue to a municipality are based on how these two factors are multiplied: assessment is the measure of the value of the property, and taxation reflects what proportion of that value must be remitted to the local government.

Alberta

In 1995, the Government of Alberta overhauled the property taxation system. In terms of valuing property, one of two approaches is used: the market-value based standard or the regulated procedure based standard. The market-value approach is by far the most common, used for most property in Alberta. The regulated procedure approach identifies a short list of property types that must be valued in a separate way. “Farmland” is one of those “regulated property” types.

While property subject to the market-value approach is valued based on the price it might fetch in an open market (willing buyer, willing seller), *farmland* is assessed based on its productive value. That is, the ability of the land to produce income from the growing of crops and/or the raising of

livestock. This assessment process is outlined by the provincial government (Alberta Municipal Affairs), but the assessment is done by a local assessor appointed by the local government.

What constitutes farmland for the purposes of property taxation is up to the municipality. Guidelines are produced by the provincial government, but essentially, it needs only be in agricultural production to be considered farmland. Assessors may look to other programs (like the Alberta Farm Fuel benefit, or the Canada Revenue Agency guidelines) for support in making those determinations, and must follow detailed procedures set out in the Municipal Government Act.

After a property's value has been assessed, the assessor places it into one of the four assessment classes as laid out in the Municipal Government Act (one is 'Farmland'; the others are residential, non-residential, and machinery and equipment). The class dictates the taxation rate that will be applied

Ontario

Ontario has the same goal of creating a differential taxation system for farmland, but goes about it in a slightly different way.

Although both provinces provide guidelines for assessment at the provincial level, Ontario's assessment system is centralized rather than based on individual municipalities. Responsibility for assessment is undertaken by the Municipal Property Assessment Corporation (MPAC), an independent body created by the *Ontario Property Assessment Corporation Act* in 1997. This Board is appointed by the Minister of Finance, and includes representation from municipalities, taxpayers, and the Province of Ontario.

MPAC uses a province-wide property assessment system based on current values for property. This system and its procedures are laid out in the *Assessment Act*. Although MPAC may assess a property as a farm, similar to Alberta it must still be classed as Farm Property for the purposes of taxation, otherwise it is taxed at the residential rate. This determination is made by the Ontario Ministry of Agriculture, Food and Rural Affairs.

Although both provinces use robust assessment protocols, a significant difference between Alberta and Ontario occurs in the assessment process. Although farm values in both jurisdictions are based on the land's productive capability, Ontario's *Assessment Act* dictates that that valuation process use farmer-to-farmer sales as the basis for assessment.

Conclusion

Understanding how Ontario and Alberta approach taxation of lands used for agriculture is important to understanding how conservation easements for agriculture might be affected by the taxation system, and thus how municipalities might view the new use of this old tool.

Both jurisdictions provide a preferential tax system for agricultural lands. Alberta takes the approach of discounting the market value, while Ontario assesses based only on the segment of the market that includes farmer-to-farmer sales.

In both cases, valuation is not ultimately based on the land's highest and best use (usually the value if it were more intensively developed).

Because conservation easements for agriculture do not change the land use, it is unlikely that either of these assessment processes would be affected. Put another way, agricultural land subject to a conservation easement for agriculture would still be agricultural land. This sets it apart from the existing conversations about taxation of non-agricultural conservation lands. It is also, therefore, unlikely that local governments would have concerns about conservation easements for agriculture based on property taxation.

COMMUNITY IMPACT OF CONSERVATION EASEMENTS FOR AGRICULTURE

Impact of Conflicting Land Uses

In rural communities where the dominant land use and business activity is agriculture, the impact of conservation easements for agriculture on the community will be relatively low. The use of conservation easements for agriculture will result in current land uses being maintained in a place where there is little pressure to change it anyhow. However, in places where there are conflicting land-uses that lead to the conversion of agricultural land to another use (e.g., urbanization) more community impact may be seen. For this paper, "community impact" means influence on social and economic structure of the human community surrounding the area where conservation easements for agriculture have been used. Conservation easements for agriculture are generally applied when there is some level of pressure on the agricultural landscape.

The University of Nebraska Lincoln conducted a study summarized in a report called *Sustaining Agriculture in Urbanizing Counties – Insights from 15 Coordinated Case Studies*. While the study is much broader than the topic addressed in this report, it did provide some insight as to the challenges faced by landowners, managers and decision makers in busy jurisdictions where agricultural land is being replaced by another land use and the community is desirous of maintaining agricultural activities in the area. It also provided insight into the impact of applying

conservation easements for agriculture in those areas. The study surveyed farmers and interviewed local experts. No studies were found that interviewed or surveyed people who were not in some way involved with agriculture or land-use decision making.

Many policy tools are used to protect agricultural land, but the purpose of this section is not to consider agricultural land protection but instead to consider the impact of conservation easements for agriculture on the community. Using the University of Nebraska Lincoln study, this section will look at three challenges that occur in urbanizing, but still agriculturally important, areas:

1. A reduction in the physical supply of farmland due to land conversion to residential or other developed uses (for this paper, this is interpreted as a social impact on the community as a result of the loss of scenery, local food supply, and a segment of the farming population who sell and move away);
2. High land prices in the urbanizing fringe and beyond because of competition from other uses (for this paper, this is interpreted as an economic impact to the farming community and to others who choose to live in the agricultural landscape); and
3. Constraints on managerial freedom to farm, as the land around farms sees an increase in non-farming residents and businesses, and there is an increase in nuisance complaints regarding the dust, noise, traffic, and smells that result from agricultural activities (for this paper, this is interpreted as a social impact resulting in conflict within the community).

Impact of Conservation Easements for Agriculture

One of the policy tools used in many of the 15 jurisdictions in the University of Nebraska Lincoln study which was considered to address the problems described above was conservation easements for agriculture³. Registering conservation easements across a number of properties may have the following impacts:

1. Land available for development is limited and therefore is available for agriculture;
2. The number of interested buyers is reduced, thereby limiting competition for purchasing land, and reducing the chances of skyrocketing prices; and
3. When contiguity of protected areas is a priority in a conservation easement program, the farms essentially buffer each other against residential or other development.

Conservation easements for agriculture placed on farmland help to maintain the current available acres for farming, or at least reduce the potential number of acres available for conversion. Municipalities and most land trusts are not opposed to all development but may use conservation easements or other tools to accommodate maintenance of agricultural lands. Many

³ In the study they use the term Purchase of Development Rights (PDR) to refer a paid conservation easement approach. In other American literature this approach may also be called a PACE – Purchase of Agricultural Conservation Easements.

municipalities have used conservation easements as support for a cluster subdivision approach or a transfer of development rights program. In these instances when the physical supply of farmland is protected, the development occurs where it makes sense for the community, its landscapes, and the services those landscapes provide.

As an example Larimer County in Colorado has a Rural Land Use Process program. This process requires subdivisions to be clustered together and requires at least two-thirds of the land to be protected with a conservation easement – either for agricultural or natural value protection. A part of the application to participate in the program is guidance on where to put the residences. The intention is that the residences are placed so that conservation is the first priority. From 1996 to 2007, over 11,000 acres had been formally protected with a CE and nearly 700 homes had been built. This program has allowed the opportunity for people to live in the county while maintaining a working landscape.

In Berks County (northwest of Philadelphia, Pennsylvania) one of the interviewee stated that land prices had stayed relatively affordable for farmers in large part due to the county's large conservation easement program. The program had protected 54,191 acres by August of 2008. However this result seems to be fairly location specific. In some regions, particularly very scenic ones, larger acreage farms that are protected with a conservation easement are seemingly very suitable for wealthy non-farmers and part-time farmers who out-compete local, full-time farmers in the area. Certain geographies have seen farmers selling their land in one high-priced region and moving to another area where there are also conversion concerns and buying conservation easement land at a price higher than the locals are willing or able to pay.

One of the objectives of the Burlington County, New Jersey conservation easement program was to maintain a contiguous farming landscape. The conservation easements in Burlington County resulted in 69% of the 279 protected parcels being adjacent to another protected parcel that did not have the same owner. This arrangement effectively reduces the potential for farm – non-farm conflict significantly.

It should be mentioned that the *Sustaining Agriculture in Urbanizing Counties* report, while considering the effectiveness of conservation easements for agriculture programs, included a section about the potential competition between farmland conservation and natural area conservation. It was noted that in at least four of the counties there was competition for funds available for farmland conservation and natural area conservation. In some of the counties natural area protected areas outnumbered agricultural protected areas. It was suggested that in part this may be because these are voluntary programs and perhaps it is a more difficult decision to enter into a conservation easement on working land. In one county it was suggested that including a natural area component was necessary to garner enough public support for the agricultural conservation components of the program.

POTENTIAL IMPLICATIONS OF CONSERVATION EASEMENTS FOR AGRICULTURE ON LAND LEASES, OWNERSHIP, AND MANAGEMENT

Within the constraints of this research project, no literature was found regarding the implication of conservation easements for agriculture on land leases, ownership and management. However, several observations can be made based on the authors' past experience.

Land Leases

Unless there are very stringent restrictions in the conservation easement there should be little to no impact on land leases. The landowner who has entered into the conservation easement is responsible to ensure the agreement is upheld regardless of who is actually working the land. If the conservation easement for agriculture simply maintains the land for agriculture then there is likely to be no impact whatsoever for the lessee – he or she may not even know a conservation easement exists (although it would be advisable the land owner let any lessee know about the agreement). If a conservation easement for agriculture were to provide management direction then the lessee would have to be made aware of the agreement. If the changes required the lessee to spend resources (e.g. time, money, etc.) in order to comply with the agreement then there may be some change or adaptation to the lease activities or what a lessee is willing to pay as a result of the agreement.

In some regions with active conservation easements for agriculture when a non-farmer buys land that should be farmed as a result of a conservation easement, they may rent it out to neighbour farmers to keep its property taxes low. Montgomery County, Maryland has an Agriculture Land Reserve Area where a significant amount of the land sold has been bought by non-farmers and then rented to farmers. Montgomery County's director of Agriculture Service believes that trend will continue and sees it as an advantage to farmers. An active conservation easement for agriculture program may end up with more land in the market to rent.

Ownership

Ownership does not change as a result of any conservation easement. The person who entered into the agreement remains the owner of the property until such time they choose to sell or give the property to someone else. As with all conservation easements, conservation easements for agriculture remain on title and bind all future landowners to the conditions and parameters in the agreement for the duration of the agreement.

Management

Management may or may not change depending on the objectives of the qualified organization or conservation body that holds the conservation easement for agriculture, and on the details negotiated with the landowner. There are some conservation easements that are very restrictive and prescriptive, requiring a landowner to follow a certain management activities (e.g., direct seeding, rotational grazing). Other conservation easements are simpler and restrict only one or two things (e.g., no subdivision) that that will largely ensure the conservation objectives are met. For instance, if a property is not subdivided or built upon, the open space objective of the conservation easement may be met. There is no change in management required.

Conversely, if a conservation easement is being applied through a program that is concerned about soil erosion (for example), the landowner may be required to implement certain management activities to prevent soil erosion (e.g., direct seeding, shelter belts). Effect on management will be dependent on the objectives of the conservation program and the interest of the landowner entering into the agreement.

CAPACITY CONSIDERATIONS IN APPLYING CONSERVATION EASEMENTS FOR AGRICULTURE IN ALBERTA AND ONTARIO

Organizational and capacity challenges

As the conservation easement is a voluntary tool, it is critical to look at the organizational and capacity challenges – and opportunities – for the groups likely to undertake the use of this tool. Unlike strictly regulatory tools, the success of the CE tool (like all voluntary tools) is based on its acceptability to the potential user. The work of the qualified organization or conservation body is to conceive their tools in such a way as to create an opportunity for the goals of the landowner to overlap with theirs.

With the expansion of the CE purposes to include agricultural land, a new dimension to this challenge emerges. Although Alberta and Ontario have an established record of use of CEs, it is difficult to say with certainty which currently-eligible entities will seek to use CEs for agriculture, and which non-traditional organizations may come forward seeking to use this tool. The authors believe it is unlikely, at least in the short term, that the greater use of CEs for agriculture will come from newly-established agricultural land trusts.

This section summarizes the types of organizations the authors anticipate could come forward seeking to use the CE tool for agricultural land conservation. This includes looking at the purpose, capacity, opportunities, and issues inherent in each group.

CURRENT CONSERVATION EASEMENT ACTIVITY IN ALBERTA

To set the context, it is important to understand the level of CE activity achieved thus far in Alberta and Ontario since the introduction of the tool in the mid-1990's.

In both provinces, private land conservation organizations range from national organizations with provincial chapters, to province-wide associations, to regional land trusts, to local land trusts with one or two properties. There are currently twelve charitable private land conservation organizations (land trusts) active in Alberta. The Ontario Land Trust Alliance lists 30 local land trusts and 5 provincial land trusts. Currently, thirteen Alberta municipalities held conservation easements (B. Ilnicki, personal communication, January 23, 2012). Seven of Ontario's 36 conservation authorities are members of OLTA and actively protect private land.

The Ontario Land Trust Alliance reports over 90,000 acres of land has been protected by all its members. The Land Stewardship Centre (LSC) reports that there are 1616 conservation easements registered in Alberta (B. Ilnicki, personal communication). As of 2005, there were 466 CEs registered in Alberta on 73,840 acres (Olaf Jensen, Canadian Wildlife Service, personal communication).

WHO IS LIKELY TO USE CONSERVATION EASEMENTS FOR AGRICULTURE

Existing 'ecological' land trusts

Land trusts and local governments in Alberta and Ontario have received conservation easements primarily for the protection of ecological systems and features. Many land trusts have a mix of organizational purposes that include cultural, agricultural, and ecological goals. A few land trusts have also threaded agricultural goals into CE agreements either by naming specific ecological features in an agricultural parcel (e.g., wetlands) or by targeting agricultural uses that align with ecological purposes (e.g., protection of native range).

Although limited in number, existing land trusts represent several key opportunities for conservation easements for agriculture. First, even for small land trusts, CEs are part of a land conservation program, so the critical step of articulating a conservation goal/need is undertaken deliberately. Second, they have access to – and are targeted by – networks and resources. These include the Alberta, Ontario and Canadian Land Trust Alliances, and the national *Canadian Land Trust Standards and Practices*. This causes them to be part of a private land conservation community almost by default. Third, for the reasons above, they have a high level of experience and expertise in structuring and managing conservation easements.

The main issues they face in embracing the new agricultural purpose for conservation easements are the potential pitfalls they face in mixing purposes for conservation easements, their low

capacity, and their limited experience as a group with non-ecological agricultural conservation issues.

Local Governments

Although several municipalities hold conservation easements, municipalities use conservation easements in a wholly different way compared with land trusts. Municipal conservation easements come about almost exclusively as the result of a proposal for development; a development proponent is either offered or asks for the option of using a CE as part of their application.

The level of capacity that a municipality has to devote to a CE program is actually more dependent on its goals than its staff complement and budget. Conservation easements with numerous and complex restrictions have a proportionately complex and time-consuming responsibility to monitor, enforce and defend; conservation easements that simply restrict subdivision, for example, are simple and particularly easy to monitor for a municipality because those applications come through them. Potentially larger questions surround who would be responsible for the operation and promotion of a CE for agriculture program. Planners and protected areas staff traditionally play a significant role in conservation easements for biodiversity, but agricultural service departments and staff, would likely play a bigger role in conservation easements for agriculture.

Municipalities have significant advantages over other potential qualified organizations and conservation bodies in several respects. Statutory documents often already articulate goals which can be a base for agricultural conservation goals. A challenge for effective conservation easements is they are perpetual raising questions about the sustainability of the holder; municipalities are, for all intents and purposes, perpetual. Municipal conservation easement programs can complement other CE-based programs such as Transfer of Development Credits. And despite being a private, voluntary tool, the overall effectiveness of CEs depends on how they are accepted by a community. Municipalities are already structured to establish those two-way conversations.

There are also a variety of issues for municipalities pursuing CEs for agriculture programs. Municipal conservation programs are subject to political pressure through their council. Monitoring of CEs has can be challenging for municipalities, raising questions about the effectiveness of their programs. Possibly related is that municipalities as a whole are not tied into the private land conservation resources and networks that land trusts are. At a base level, a municipality is not established solely to conserve natural resources, so different parts of the corporation may be working at cross purposes. Finally, although conservation easements for agriculture will for the most part avoid this issue due to agriculture generally being taxed at the lowest rate, property taxation of conservation lands is a concern for many who feel that the foregone revenues are not sufficiently offset by the public good provided.

Agriculture groups

Various non-government (or even quasi-government) agriculture groups represent the biggest unknown in terms of potential new groups and their capacity. These are groups that have an interest or stake in agricultural conservation issues, but may have played little or no role in private land conservation thus far. Broadly, possibilities might include commodity groups, agricultural advocacy groups, forage associations, food security/local food groups, and agricultural societies.

This group is the one that will likely require the most explicit direction as to the policy intent of the conservation easement for agriculture. Despite all being involved in some aspect of agricultural conservation, their purposes are very wide-ranging, and include industry promotion, agri-business development, agri-cultural preservation, policy advocacy, and others.

These organizations represent significant capacity, both in terms of staff complement and financial resources. Because they are already connected to networks and constituencies, they represent a considerable mobilizing force. They are keenly aware of agriculture and many are familiar with at least some aspects of threats to agriculture in their area.

The issues range from structural to mandate. Several of these groups have an existing not-for-profit structure, but are not charitable, which would disqualify them from being qualified organizations or conservation bodies. Because they serve a limited group, they would likely not qualify for consideration as a charity. Few are focused on agricultural “land” conservation, and tend to focus on industry, agri-business, and heritage. Even fewer are those that are familiar with private land conservation.

Agricultural operators

In many ways this is the key group that needs to be engaged, as these are the people who would voluntarily enter into conservation easements for agriculture. The challenge to manage will be that this is also arguably the group most likely to press the government for conservation easements for agriculture that are based on individual right-to-farm bases rather than societal food production bases. This could happen either individually or through their commodity associations.

BROAD POLICY CONSIDERATIONS IN IMPLEMENTING CONSERVATION EASEMENTS FOR AGRICULTURE

Though agricultural land conservation is a provincial matter, when looking at the implementation of conservation easements for agriculture, there are several considerations that span provincial boundaries. These higher-level policy issues would require attention from a national, federal, and/or multi-provincial perspective.

Eco-Gifts Program

Recognizing that habitat loss and degradation are the greatest threats to biodiversity in Canada and that many key habitats are on private land, the federal Ecological Gifts (of EcoGifts) Program was established to provide incentive and recognition for landowners who to protect their ecologically sensitive land. By participating in the program, landowners who donate title or a conservation easement on ecologically sensitive land are eligible for special tax benefits. Ecologically sensitive land includes:

- Areas identified, designated, or protected under a recognized classification system;
- Natural spaces that are significant to the environment in which they are located;
- Sites that have significant current ecological value or potential for enhanced ecological value as a result of their proximity to other significant properties;
- Private lands that are zoned by municipal or regional authorities for the purpose of conservation;
- Natural buffers around environmentally sensitive areas such as water bodies, streams or wetlands; and
- Areas or sites that contribute to the maintenance of biodiversity or Canada's environmental heritage.

The definition provided by the EcoGifts program is fairly broad but most definitely targeted at land to be protected for ecological purposes. There are EcoGifts easements in Canada that include a portion of land that has an agricultural purpose. These parcels of land also have an ecologically sensitive feature that is linked to the agricultural piece by being on the same land title. There are other circumstances where land has not been accepted into the program when the entire portion of the land associated to the land title is cultivated. It is not likely that any land with more intensive types of agriculture have ever been the subject of an application to the program since the purpose is so clearly ecological. There is some limited potential to apply the EcoGift program to land that is encumbered with a CE for agricultural purposes if the land also has appropriate ecological features.

However, in general, the EcoGifts program would not be available to landowners using conservation easements for agricultural on strictly agricultural land.

Canada Revenue Agency Views of Charitable Organizations and Purpose

Under both the *Alberta Land Stewardship Act* and the Ontario *Conservation Land Act*, an eligible non-government holder of a conservation easement must be a registered charity. It is, therefore, important to look at what the Canada Revenue Agency (CRA) considers to be charitable in the context of potential holders of conservation easements for agriculture.

There is no federal law specifically governing charities in Canada. A 'charity' is briefly described in the *Income Tax Act*, but the regulation is primarily left to a number of policy statements of the Canada Revenue Agency.

The Canada Revenue Agency makes a distinction between a *Non-Profit Organization* and a *Charity*, and dictates that a given organization can only be one of these. Though there are many similarities, charities must meet a Public Benefit Test. This test requires an organization to show that:

its purposes and activities provide a measurable benefit to the public ... and the people who are eligible for benefits are either the public as a whole, or a significant section of it. The beneficiaries cannot be a restricted group or one where members share a private connection; this includes social clubs or professional associations.

CRA policy views these latter organizations as being established for "private benevolence," and therefore not charitable. This excludes several well-known types of non-profit organizations from becoming charities, such as trade associations, industry groups, and recreation groups.

It is also important to note that the charitable nature of conservation easements has not been a result of engineering them to fit a legal definition of 'charitable'. Rather, they are recognized as charitable initiatives because of their inherent aim of bettering society as a whole.

As discussed above, both the organizations who might pursue agricultural land conservation and the conservation easement for agriculture tool itself may not be considered charitable under the *Income Tax Act*.

Growing Forward (Agricultural Policy Framework)

Agriculture and Agri-Food Canada is mandated to provide information, research and technology, and policies and programs to achieve an environmentally sustainable, innovative, and competitive agriculture, agri-food and agri-based products sector that proactively manages risk. The Government of Canada and the provincial and territorial governments working with the Canadian agriculture and agri-food industry created an Agricultural Policy Framework (APF) in 2001. This was done in an effort to create *common goals for food safety, innovation and environmentally-responsible production in agriculture*. The APF was updated in 2008 to create *Growing Forward 2008-2013*. *Growing Forward 2* is now being designed with programs targeted to address at least one of the following key core outcomes:

- Profitable and competitive industry;
- Ability to retain or capture domestic and international market opportunities;
- Prepared for and able to respond effectively to emergencies;
- Able to manage risk effectively.

The discussion document for *Growing Forward 2* considers Global Agriculture and Food Trends and recognizes that:

- **Growth in agricultural and agri-food production is affected by natural resource constraints (for example, land and water).** Per-capita arable land has been declining globally, primarily due to population growth and urbanization. In general terms, global water resources are currently sufficient; however they are unevenly distributed and requirements are expected to increase by 40 percent over the next 20 years. Competition by other users of land and water will increase pressures to use resources more efficiently in the future.

While this statement may suggest that there is a need to exercise conservation/protection of natural resources including land there is little else throughout the current discussion documents that refer to land conservation.

The current *Growing Forward 2* discussion document also includes a section called Challenges and Opportunities for the Canadian Sector. This section suggests that environmentally-conscious consumers are more and more interested in how agricultural products are produced. While *Growing Forward 2* does not suggest this, conservation easements could be used to indicate certain management activities/requirements, providing the consumer a level of confidence in the product they are buying.

At the time this report was being researched, *Growing Forward 2* was in the 'engagement phase'. From a first round of discussions with representatives of Canadian agriculture, agri-food and agri-based processing sectors two broad outcomes and two key drivers had emerged as being central to the continuing success of the industry from now until 2020, and beyond. The second broad outcome (Adaptability and Sustainability) relates more to land conservation than the first (Competitiveness and Market Growth). While CEs for agriculture could provide some sustainability benefits, they may be seen as a negative when it comes to "Adaptability" particularly as most conservation easements in Canada are perpetual and depending on how the document is written could be quite restrictive with respect to future land uses. Both the *Alberta Land Stewardship Act* and the Ontario *Conservation Land Act* allow for conservation easements to be registered for a term shorter than perpetuity. Depending on the objective of the conservation program a term easement may be useful as a legal backstop in testing management practices or community acceptability. One thing to consider is that the conservation easement term should be as enduring as the intent.

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

Several more specific conclusions and recommendations are contained throughout this report. However, the authors offer these summary conclusions in support of the broad goals for this research/report articulated in the Introduction, namely:

- Outline the current situation with regard to conservation easements for agriculture in Canada, and comparable jurisdictions;
- Provide a resource for any jurisdiction in Canada that either has, or is seeking to create, a legal and policy environment supportive of using conservation easements for agriculture; and
- Provide recommendations for Agriculture and Agri-Food Canada regarding the conservation easement tool for agriculture

ALBERTA AND ONTARIO HAVE TAKEN SIMILAR APPROACHES TO CONSERVATION EASEMENTS FOR AGRICULTURE

In creating the opportunity for conservation easements to be applied to protecting agricultural lands, there are two basic approaches: 1) create a new tool, or 2) expand the existing list of allowable purposes for conservation easements. Both Ontario and Alberta chose to expand their list of purposes, adding protection of agricultural lands as an allowable purpose. The advantages are that this is administratively simpler, and it allows for the conservation easement tool to exist and evolve as one tool. The disadvantage is that agriculture is a land use, and most every other purpose is an outcome, creating a challenging ‘apples and oranges’ situation when considering the application of conservation easements with multiple or mixed purposes.

CONSERVATION EASEMENTS FOR AGRICULTURE PROTECT AGRICULTURAL LAND, NOT AGRI-BUSINESSES NOR THE AGRICULTURE INDUSTRY

There are many dimensions to protecting agriculture from the variety of pressures that threaten its viability. Many government programs and policies, and many community-based initiatives, focus on protecting the agricultural business or the industry. The application of the conservation easement tool with regard to agriculture protects the *agricultural land*, but is not well-suited to protecting the business or industry dimensions directly. This should not be considered a problem (industry and businesses will not be viable if there is no land base), but should be kept front of mind when considering its use in the context of agricultural conservation more broadly.

CONSERVATION EASEMENTS FOR AGRICULTURE MAY CONFLICT WITH CONSERVATION EASEMENTS FOR ECOLOGICAL PURPOSES

Although environmentally-sustainable agriculture and ecological conservation can be complementary strategies, when considering the broad range of agricultural activities, there is great potential for agriculture and environment to conflict. A focus on the protection of (and maximization of) food production could encourage management practices that are not sustainable. When conservation easement policies for agriculture are not clear, this potential for conflict can trickle down to the conservation easement world. Clear goals need to be articulated, as well as clear guidelines for how mixed-purpose conservation easements could be structured.

PROPERTY TAXATION IS UNLIKELY TO BE A MAJOR ISSUE FOR CONSERVATION EASEMENTS FOR AGRICULTURE

Although the impact of conservation easements on property taxation has been an issue for municipalities since the inception of CEs in Canada, conservation easements for agriculture are unlikely to create a similar stir. The issue around property taxation is whether the perceived reduction in economic value of the land subject to a CE translates into a reduction in property tax revenues. This is rarely an issue in Canada since provincial and municipal governments already tend to encourage agricultural land to be taxed at the lowest rate. The application of a conservation easement for agriculture would likely have limited impact on assessment and taxation in this case.

CONSERVATION EASEMENTS FOR AGRICULTURE MAY NOT BE CHARITABLE

The Canada Revenue Agency and the *Income Tax Act* dictate what organizations, activities and gifts in Canada are considered charitable, and thus eligible for special tax treatment. Further, both Ontario and Alberta require that an eligible non-government holder of conservation easements be a registered charity. Because agriculture in and of itself is not a charitable activity, and agricultural organizations serve specialized rather than public interests, conservation easements for agriculture could easily not be considered charitable. However, if conservation easements for agriculture, and their overarching provincial policies, are conceived and articulated so as to promote the public interest, this issue could be overcome.

LOCAL GOVERNMENTS WILL LIKELY PLAY A BIGGER ROLE IN CONSERVATION EASEMENTS FOR AGRICULTURE

Increasingly, local governments are looking to conservation easements to help them address conservation goals that are enduring beyond the political cycle of municipal councils, yet supportive of voluntary engagement by landowners. In the U.S., the vast majority of conservation easement programs for agriculture are established by local counties. Rural municipalities have a significant agricultural conservation mandate and agricultural community, but limited tools which

they can wield to protect agricultural land. It is likely that as conservation easements for agriculture become more common and comfortable, local governments will increasingly step forward to use them.

NEGATIVE COMMUNITY IMPACTS FROM CONSERVATION EASEMENTS FOR AGRICULTURE ARE LIKELY TO BE LOW

Because the dominant land use in communities where conservation easements for agriculture are likely to be used is agriculture, the negative community impacts (i.e., reduction in supply of farmland, high land prices in the urbanizing fringe, and constraints on managerial freedom to farm) are likely to be limited. This is not to say that conflicts between land uses will not occur, but rather those conflicts are likely to be pre-existing, and not exacerbated by the use of conservation easements for agriculture.

IMPACTS ON LAND LEASE, OWNERSHIP AND MANAGEMENT WILL BE LIMITED

Because conservation easements for agriculture will maintain the current land use pattern, its effect on land lease, ownership and management will likely be limited. Ownership does not change due the granting of a conservation easement; lessees are leasing agricultural land for agricultural purposes. Depending on the conservation easement, there may be management constraints and requirements; this is very specific to the private land conservation organization.

THE ECOGIFTS PROGRAM WILL LIKELY NOT BE RELEVANT FOR CONSERVATION EASEMENTS FOR AGRICULTURE

For donations of conservation easements (and lands in fee simple) for ecological purposes, the federal government has created the Ecological Gifts Program, which provides significant capital gains benefits, tax receipt benefits, and CE assessment guarantees. There is no such parallel for gifts of agricultural valuable lands or interests in lands. There have been many gifts of agricultural land which have enjoyed the benefits of the EcoGifts program, but these were only incidentally agricultural, and the CE was constructed primarily to protect the ecological values of the property.

GROWING FORWARD IS NOT STRUCTURED TO SUPPORT CONSERVATION OF AGRICULTURAL LAND

At the federal and national level, the obvious policy framework within which to consider agricultural land conservation is the Agricultural Policy Framework, or *Growing Forward*. However, there is very little in the Growing Forward framework that can be construed to speak to agricultural land conservation, and therefore little room for inclusion of a discussion about conservation easements for agriculture. Likely because agricultural land is considered the

responsibility of the provinces (along with all other natural resources) the focus is on the agri-business sector and the agricultural industry as a whole.

Role for Agriculture and Agri-Food Canada

As noted above, natural resources – including agricultural land – are the policy purview of the provincial governments. This makes it challenging to define a role for the Agriculture and Agri-Food Canada with regard to conservation easements for agriculture – a tool designed with specific reference to agricultural land. However, the authors feel there are at least three critical roles which AAFC could play in increasing the effective use of conservation easements for agriculture in Canada.

RAISE AWARENESS OF THE POLICY CHALLENGES FOR CONSERVATION EASEMENTS FOR AGRICULTURE

This report outlines several policy challenges and opportunities that Alberta and Ontario are currently facing in implementing their legislation that enables conservation easements for agriculture. These challenges and opportunities do not just affect the provincial government, but the qualified organizations and conservation bodies in those two provinces, who need clear direction. As well, any other province wishing to expand the use of conservation easements to include protection of agricultural land could benefit from the lessons learned from other jurisdictions. Because AAFC has responsibility to promote agriculture across the country, they are well-positioned to be the conveners of multi-jurisdictional discussions, and creators of cross-jurisdictional resources which could assist any jurisdiction trying to implement conservation easements for agriculture.

PURSUE DEVELOPMENT OF AN AGRICULTURAL GIFTS PROGRAM

As noted above, the current Ecological Gifts Program provides significant tax and appraisal benefits for landowners making a gift of a conservation easement to an eligible CE holder. Gifts of land or interests in land that are agricultural in nature, receive the same donation benefits as any other gift. The practice of CEs across the country since the mid-1990's has been significantly boosted by the EcoGifts program, and the benefits it provides to individual landowners. It is very likely that such benefits would boost participation in conservation easement programs for agriculture.

AAFC is well-positioned to play a lead role in a discussion around the desirability and benefits of an Agricultural Gifts program, determining the need and nature of such a program for each of the provincial jurisdictions, and operating at the federal level to promote the idea.

CLARIFY CHARITABLE ELIGIBILITY OF AGRICULTURE

As noted above, agriculture in and of itself is not considered a charitable activity as its benefits generally accrue to one industry. However, properly conceived and articulated, there are several aspects of agriculture that could potentially be considered charitable. These would likely relate to environmentally-sustainable agriculture, food security, and agricultural heritage. The lack of certainty in this area will likely be a barrier both to new agricultural land trusts establishing and to conservation easements for agriculture being undertaken. As this is a national issue, affecting all provinces, AAFC could play an important role in leading that discussion, and framing how agriculture could and could not qualify as charitable.

PROVIDE SUPPORT FOR AGRICULTURAL LAND TRUSTS

There are very few agricultural land trusts in Canada, probably in the order of five or six. The ability of the conservation easement tool to be applied in protecting agricultural lands is dependent on the ability of those land trusts – and new agricultural land trusts – to explore and test the tool. By providing pilot project support for these land trusts, AAFC could significantly boost the uptake of the conservation easement tool for agriculture.

ADDRESS AGRICULTURAL LAND LOSS IN GROWING FORWARD 2

Although not directly related to conservation easements for agriculture, one missed opportunity is the lack of attention to agricultural land loss in *Growing Forward 2*. It becomes more difficult for provincial and local land trusts to make a strong case for the national importance of addressing the loss and fragmentation of agricultural land when the national policy is so lacking in this regard. The ability of local municipalities and agricultural conservation organizations to promote agricultural land conservation tools like CEs for agriculture becomes more challenging in this circumstance. AAFC should give consideration to how they can promote agricultural land conservation within the context of *Growing Forward 2* to help address this dilemma.

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APPENDICES

Appendix 1: Alberta and Ontario Laws Regarding Conservation Easements for Agriculture

ONTARIO

Conservation Land Act, R.S.O. 1990, CHAPTER C.28

Definitions

1. In this Act,

“areas of natural and scientific interest” means areas of land and water containing natural landscapes or features that have been identified by the Ministry of Natural Resources as having values related to protection, natural heritage appreciation, scientific study or education; (“zones d’intérêt naturel et scientifique”)

“conservation authority land” means land owned by a conservation authority; (“terre relevant d’un office de protection de la nature”)

“conservation land” includes wetland, areas of natural and scientific interest, land within the Niagara Escarpment Planning Area, conservation authority land and such other land owned by non-profit organizations that through their management contribute to provincial conservation and heritage program objectives; (“terre protégée”)

“Minister” means the Minister of Natural Resources; (“ministre”)

“Niagara Escarpment Planning Area” means the geographic area contained within the Niagara Escarpment Plan; (“zone de planification de l’escarpement du Niagara”)

“wetland” means land,

(a) that is seasonally or permanently covered by shallow water, or

(b) in respect of which the water table is close to or at the surface,

so that the presence of abundant water has caused the formation of hydric soils and has favoured the dominance of either hydrophytic or water tolerant plants. (“terre marécageuse”) R.S.O. 1990, c. C.28, s. 1; 2009, c. 12, Sched. L, s. 3.

Establishment of programs

2. (1) The Minister may establish programs to recognize, encourage and support the stewardship of conservation land. R.S.O. 1990, c. C.28, s. 2 (1); 1994, c. 27, s. 128 (1).

Grants

(2) A program established under subsection (1) shall provide for the payment of grants in respect of such classes of conservation land as the Minister considers appropriate subject to such conditions precedent or subsequent as the Minister considers necessary. R.S.O. 1990, c. C.28, s. 2 (2).

Definitions

3. (1) In this section,

“conservation body” means,

- (a) the Crown in right of Canada or in right of Ontario,
- (b) an agency, board or commission of the Crown in right of Canada or in right of Ontario that has the power to hold an interest in land,
- (c) a band as defined in the *Indian Act* (Canada),
- (d) the council of a municipality,
- (e) a conservation authority,
- (f) a corporation incorporated under Part III of the *Corporations Act* or Part II of the *Canada Corporations Act* that is a charity registered under the *Income Tax Act* (Canada),
- (g) a trustee of a charitable foundation that is a charity registered under the *Income Tax Act* (Canada), or
- (h) any person or body prescribed by the regulations; (“organisme de protection de la nature”)
- (i)

“owner” means the person registered on title in the proper land registry office as the owner of land. (“propriétaire”) 1994, c. 27, s. 128 (2); 2000, c. 26, Sched. L, s. 2 (1); 2004, c. 16, Sched. D, Table.

Conservation easements and covenants

(2) An owner of land may grant an easement to or enter into a covenant with one or more conservation bodies,

- (a) for the conservation, maintenance, restoration or enhancement of all or a portion of the land or the wildlife on the land;
- (b) for the protection of water quality and quantity, including protection of drinking water sources;
- (c) for watershed protection and management;
- (d) for the conservation, preservation or protection of the land for agricultural purposes;
- (e) for the purposes prescribed by the regulations made under this Act; or
- (f) for access to the land for the purposes referred to in clause (a), (b), (c), (d) or (e). 2006, c. 23, s. 35 (3).

Easement reserved by conservation body

(2.1) When a conservation body conveys land, it may reserve an easement for a purpose referred to in subsection (2). 2006, c. 23, s. 30 (1).

Same

(2.2) A reference in any Act or regulation to easements granted under this Act also applies to easements reserved in accordance with subsection (2.1). 2006, c. 23, s. 30 (1).

Assignment

(3) The easement or covenant may be assigned by a conservation body to another conservation body. 1994, c. 27, s. 128 (2).

Validity

(4) The easement or covenant is valid whether or not the conservation body or assignee owns appurtenant land or land capable of being accommodated or benefited by the easement or covenant and regardless of whether the easement or covenant is positive or negative in nature. 1994, c. 27, s. 128 (2).

Term

(4.1) The easement or covenant is valid for the term specified in it. 2005, c. 30, s. 4 (2).

Amendment

(4.2) The owner of the land affected by the easement or covenant shall not amend the easement or covenant without the consent of the Minister. 2005, c. 30, s. 4 (2).

Release

(4.3) The conservation body or assignee shall not release the easement or covenant without the consent of the Minister. 2005, c. 30, s. 4 (2).

Notice to Crown

(4.4) No person shall commence a proceeding to amend or release the easement or covenant without giving notice to the Minister. 2005, c. 30, s. 4 (2).

Registration

(5) The easement or covenant may be registered against the land affected in the proper land registry office and, once registered, it runs with the land against which it is registered. 1994, c. 27, s. 128 (2).

Enforcement

(6) The conservation body or assignee may enforce the easement or covenant against the owner of the land and, if it is registered, against any subsequent owner of the land against which it is registered. 1994, c. 27, s. 128 (2).

No merger of registered easement

(6.1) If a conservation body that is a party to an easement that is registered as described in subsection (5) becomes the owner of the affected land,
(a) the easement is suspended but does not merge; and
(b) if the conservation body afterwards conveys the land, the easement becomes effective again. 2006, c. 23, s. 30 (2).

Mandatory assignment

(7) If a conservation body ceases to be a conservation body, it shall be deemed to have assigned every easement and covenant to which it is a party to the Minister. 1994, c. 27, s. 128 (2).

Effect of deemed assignment

(8) The Minister may register notice of the deemed assignment against the land affected in the proper land registry office and may assign the easements and covenants, or any of them, or hold them as if he or she were a conservation body. 1994, c. 27, s. 128 (2).

Rights preserved

(9) Subject to subsections (4.2), (4.3) and (4.4), nothing in this section limits a right or remedy that a person may have under any other Act, at common law or in equity in respect of an easement or covenant, if the right or remedy is not inconsistent with this section. 1994, c. 27, s. 128 (2); 2005, c. 30, s. 4 (3).

Deeming provision

(10) A covenant under this section, whether positive or negative in nature, shall be deemed to be a restrictive covenant. 1994, c. 27, s. 128 (2).

Regulations

(11) The Minister may make regulations,

- (a) prescribing persons or bodies for the purpose of clause (h) of the definition of “conservation body” in subsection (1);
- (b) respecting those records, information, reports and returns with respect to easements and covenants that a conservation body holds under this section that the conservation body must keep, must open for inspection or must submit to the Minister or other person designated in the regulations;
- (c) prescribing purposes for the purpose of clause (2) (e);
- (d) providing for and respecting one or more registries of easements and covenants under this Act. 2000, c. 26, Sched. L, s. 2 (2); 2006, c. 23, ss. 30 (3), 35 (4).

Ontario Heritage Act, R.S.O. 1990, CHAPTER O-18

Sec. 22 Easements and covenants [as held by the Ontario Heritage Trust]

- (1) Any easement or covenant entered into by the Trust may be registered against the real property affected in the proper land registry office.
- (2) Where an easement or covenant is registered against real property under subsection (1), such easement or covenant shall run with the real property and the Trust may enforce such easement or covenant, whether positive or negative in nature, against the owner or any subsequent owners of the real property and the Trust may enforce such easement or covenant even where it owns no other land which would be accommodated or benefited by such easement or covenant.

The provisions for conservation easements in the Ontario Heritage Act make no mention of farming or agriculture, except in the context of stop orders to protect archeological resources.

ALBERTA

Alberta Land Stewardship Act, R.S.A. 2009, CHAPTER A-26.8
(Part 3, Division 2, Conservation Easements)

Definitions

28 In this Division,

- (a) “grantee” means the recipient of a conservation easement and includes a successor, assignee, executor, administrator, receiver, receiver manager, liquidator and trustee of the grantee;
- (b) “grantor” means the person who grants a conservation easement and includes a successor, assignee, executor, administrator, receiver, receiver manager, liquidator and trustee of the grantor;
- (c) “qualified organization” means
 - (i) the Government,
 - (ii) a Government agency,
 - (iii) a local government body, or
 - (iv) a corporation that
 - (A) has as one of its objects the acquisition and holding of interests in land for purposes that are substantially the same as any of the purposes for which a conservation easement may be granted,
 - (B) has in its constating instrument a requirement that, on or in contemplation of the winding-up of the corporation, all conservation easements that the corporation holds are to be transferred to another qualified organization, and
 - (C) is a registered charity within the meaning of the Income Tax Act (Canada).

Purpose of conservation easements

29(1) A registered owner of land may, by agreement, grant to a qualified organization a conservation easement in respect of all or part of the land for one or more of the following purposes:

- (a) the protection, conservation and enhancement of the environment;
- (b) the protection, conservation and enhancement of natural scenic or esthetic values;
- (c) the protection, conservation and enhancement of agricultural land or land for agricultural purposes;
- (d) providing for any or all of the following uses of the land that are consistent with the purposes set out in clause (a), (b) or (c):
 - (i) recreational use;
 - (ii) open space use;
 - (iii) environmental education use;

(iv) use for research and scientific studies of natural ecosystems.

(2) In subsection (1), “registered owner of land” means

- (a) the person registered in a land titles office as the owner of the fee simple in the land, and
- (b) in the case of settlement patented land, a person registered as the owner in the Metis Settlements Land Registry established under the Metis Settlements Act, subject to any General Council Policy with respect to who is to be considered the registered owner of land for the purposes of this Division.

Enforcement of conservation easements

30(1) A conservation easement may be enforced by

- (a) the grantee, or
- (b) a qualified organization, other than the grantee, that the grantor has designated in writing as having the power to enforce the conservation easement, or by both the grantee and the qualified organization.

(2) A grantor may not designate more than one qualified organization at a time to enforce the conservation easement.

(3) A grantee may assign a conservation easement to another qualified organization.

(4) A grantee who assigns a conservation easement must immediately notify the grantor of that assignment.

Modification or termination of conservation easement

31 A conservation easement may be modified or terminated

- (a) by agreement between the grantor and the grantee, or
- (b) by order of a Designated Minister, whether or not the Designated Minister is a grantor or grantee, if the Designated Minister considers that it is in the public interest to modify or terminate the conservation easement.

Nature of conservation easements

32(1) A conservation easement constitutes an interest in land in the grantee.

(2) A conservation easement does not lapse by reason only of

- (a) non-enforcement of it,
- (b) the use of the land that is the subject of the conservation easement for a purpose that is inconsistent with the purposes of the conservation easement, or
- (c) a change in the use of land that surrounds or is adjacent to the land that is the subject of the conservation easement.

(3) With respect to settlement patented land, subsection (1) is subject to any General Council Policy.

Registration of conservation easement

33(1) A conservation easement may be registered

- (a) under the Land Titles Act with the Registrar of Titles, or
- (b) under the regulations under the Metis Settlements Act with the Registrar of the Metis Settlements Land Registry, subject to any General Council Policy.

- (2)** A person intending to register a conservation easement must give prior notice of the registration in accordance with the regulations to
- (a) the following persons, as required:
 - (i) the Minister responsible for the Municipal Government Act, if the land that is the subject of the conservation easement is located in an improvement district;
 - (ii) the Special Areas Board, if the land that is the subject of the conservation easement is located in a special area;
 - (iii) the council of the municipality or the council of the Metis settlement in which the land that is the subject of the conservation easement is located,
 - (b) the Minister of Infrastructure, and
 - (c) the Minister of Transportation.
- (3)** When a conservation easement is presented for registration, the appropriate Registrar must endorse a memorandum of the conservation easement on the certificate of title to the estate or interest in land that is the subject of the conservation easement.
- (4)** If a conservation easement is modified or is terminated, one of the parties to the agreement, or a Designated Minister in the case of a modification or termination of the conservation easement under section 31(b), must register a copy of the document effecting the modification or termination with the appropriate Registrar, and the Registrar must endorse a memorandum on the certificate of title to the estate or interest in land noting the modification or discharging the registration, as the case may be.
- (5)** If a conservation easement expires, one of the parties to the agreement must notify the appropriate Registrar, and the Registrar must endorse a memorandum on the certificate of title to the estate or interest in land discharging the registration.

Effect of registration

34(1) A conservation easement that is registered under section 33 runs with the land and may be enforced whether it is positive or negative in nature and notwithstanding that the person wishing to enforce the conservation easement does not have an interest in any land that would be accommodated or benefited by the conservation easement.

(2) Subject to subsection (3), this Division applies notwithstanding section 48 of the *Land Titles Act*.

(3) A conservation easement is deemed to be a condition or covenant for the purpose of section 48(4) and (6) of the *Land Titles Act*.

(4) With respect to settlement patented land, subsection (1) is subject to any General Council Policy.

Conservation easement regulations

35 A Designated Minister may make regulations for the purpose of this Division.

Appendix 2: American Examples of Laws for Conservation Easements for Agriculture

Hawaii

- Hawaii — Haw. Rev. Stat. § 198-1
http://www.capitol.hawaii.gov/hrscurrent/Vol03_Ch0121-0200D/HRS0198/HRS_0198-0001.htm [outdated]
- “§ 198-1(4) — Statute was amended in 2007 to add agriculture as a qualified purpose.”
- Haw. Rev. Stat. § 198-1 says:
 - “(4) Preserve and protect land for agricultural use. [L 1985, c 149, pt of §1; am L 1996, c 194, §1; am L 2007, c 145, §2]”

Massachusetts

- Massachusetts — Mass. Gen. Laws ch. 184, § 31
<http://www.mass.gov/legis/laws/mgl/184-31.htm>
- “There are also special termination standards for agricultural easements and watershed preservation easements.” P.24
- “Separate definitions of “preservation restriction,” “agricultural restriction,” “watershed preservation restriction” and “affordable housing restriction.”
- Mass. Gen. Laws ch. 184, § 31 says:
 - “An agricultural preservation restriction means a right, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land appropriate to retaining land or water areas predominately in their agricultural farming or forest use, to forbid or limit any or all (a) construction or placing of buildings except for those used for agricultural purposes or for dwellings used for family living by the land owner, his immediate family or employees; (b) excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance in such a manner as to ***adversely affect the land’s overall future agricultural potential***; and (c) other acts or uses detrimental to such retention of the land for agricultural use. Such agricultural preservation restrictions shall be in perpetuity except as released under the provisions of section thirty-two. All other customary rights and privileges of ownership shall be retained by the owner including the right to privacy and to carry out all regular farming practices.”

New Hampshire

- New Hampshire — N.H. Rev. Stat. Ann. § 477:45
<http://www.gencourt.state.nh.us/rsa/html/NHTOC/NHTOC-XLVIII-477.htm>
<http://www.gencourt.state.nh.us/rsa/html/NHTOC/NHTOC-V-79-B.htm>
- § 477:45(III) — Separate definition of “agricultural preservation restriction.” Contains unusual prohibition on restrictions against buildings “used for agricultural purposes or for

dwelling used for family living by the land owner, his immediate family or employees.” Potentially defeats conservation and agricultural purposes of an agricultural easement.”

- N.H. Rev. Stat. Ann. § 477:45 says:
 - “III. “Agricultural preservation restriction” means the restraint placed on the development rights of agricultural land whether stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land which is appropriate to retaining land or water areas predominantly in their agricultural use, to prohibit or limit construction or placement of buildings except those used for agricultural purposes or for dwellings used for family living by the land owner, his immediate family or employees; excavation, dredging or removal of loam, sod, peat, gravel, soil, rock or other mineral substance in such a manner as to adversely affect the land's future agricultural potential; or other acts or uses detrimental to such retention of the land for agricultural use.”

Ohio

- Ohio — Ohio Rev. Code Ann. § 5301.67 <http://codes.ohio.gov/orc/5301.67>
- Special rules for agricultural easements.
- Ohio Rev Code says:
 - (B) “Agriculture” means those activities occurring on land devoted exclusively to agricultural use, as defined in section 5713.30 of the Revised Code, or on land that constitutes a homestead.
 - (C) “Agricultural easement” means an incorporeal right or interest in land that is held for the public purpose of retaining the use of land predominantly in agriculture; that imposes any limitations on the use or development of the land that are appropriate at the time of creation of the easement to achieve that purpose; that is in the form of articles of dedication, easement, covenant, restriction, or condition; and that includes appropriate provisions for the holder to enter the property subject to the easement at reasonable times to ensure compliance with its provisions.
- Ag definition from 5713.30 [see “Ohio Definition of Ag Land.docx”]

Iowa

- Iowa — Iowa Code Ann. § 457A.1 <http://www.legis.state.ia.us/IowaLaw.html>
- § 457A.1 — 2002 amendment added agriculture, open space and cultural resources as authorized purposes of an easement.
- Iowa Code Ann. § 457A.1 says:
 - “The department of natural resources, soil and water conservation districts as provided in chapter 161A, the historical division of the department of cultural affairs, the state archaeologist appointed by the state board of regents pursuant to section 263B.1, any county conservation board, and any city or agency of a city may acquire by purchase, gift, contract, or other voluntary means, but not by eminent domain, conservation easements in land to preserve scenic beauty,

wildlife habitat, riparian lands, wetlands, or forests; promote outdoor recreation, agriculture, soil or water conservation, or open space; or otherwise conserve for the benefit of the public the natural beauty, natural and cultural resources, and public recreation facilities of the state.

Michigan

- Michigan — Mich. Comp. Laws § 324.2140 <http://legislature.mi.gov/doc.aspx?mcl-451-1994-l-21-11>
- General — Supplemental treatment of agricultural and open space easements in Mich. Comp. Laws § 324.36101
- Mich. Comp. Laws § 324.2140 says:
 - “(a) “Conservation easement” means an interest in land that provides limitation on the use of land or a body of water or requires or prohibits certain acts on or with respect to the land or body of water, whether or not the interest is stated in the form of a restriction, easement, covenant, or condition in a deed, will, or other instrument executed by or on behalf of the owner of the land or body of water or in an order of taking, which interest is appropriate to retaining or maintaining the land or body of water, including improvements on the land or body of water, predominantly in its natural, scenic, or open condition, or in an agricultural, farming, open space, or forest use, or similar use or condition.”
- Mich. Comp. Laws § 324.36101 says:
 - (a) "Agricultural conservation easement" means a conveyance, by a written instrument, in which, subject to permitted uses, the owner relinquishes to the public in perpetuity his or her development rights and makes a covenant running with the land not to undertake development.
 - (b) "Agricultural use" means the production of plants and animals useful to humans, including forages and sod crops; grains, feed crops, and field crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, swine, captive cervidae, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; maple syrup production; Christmas trees; and other similar uses and activities. Agricultural use includes use in a federal acreage set-aside program or a federal conservation reserve program. Agricultural use does not include the management and harvesting of a woodlot.
 - “(h) "Farmland" means 1 or more of the following:
 - (i) A farm of 40 or more acres in 1 ownership, with 51% or more of the land area devoted to an agricultural use.
 - (ii) A farm of 5 acres or more in 1 ownership, but less than 40 acres, with 51% or more of the land area devoted to an agricultural use, that has produced a gross annual income from agriculture of \$200.00 per year or more per acre of cleared and tillable land. A farm described in this subparagraph enrolled in a federal acreage set aside program or a federal conservation reserve program is considered to have produced a gross

annual income from agriculture of \$200.00 per year or more per acre of cleared and tillable land.

- (iii) A farm designated by the department of agriculture as a specialty farm in 1 ownership that has produced a gross annual income from an agricultural use of \$2,000.00 or more. Specialty farms include, but are not limited to, greenhouses; equine breeding and grazing; the breeding and grazing of cervidae, pheasants, and other game animals; bees and bee products; mushrooms; aquaculture; and other similar uses and activities.
- (iv) Parcels of land in 1 ownership that are not contiguous but that constitute an integral part of a farming operation being conducted on land otherwise qualifying as farmland may be included in an application under this part.

Appendix 3: Sample Land Trust Visions and Policies Regarding Agricultural Land Conservation

ONTARIO

The Ontario Land Trust Alliance lists 30 local land trusts, 5 provincial land trusts, and 7 conservation authorities. Although many land trusts work with agricultural landowners, of those listed by OLTA, only the following speak specifically to farmland or agricultural land conservation in their mission or vision:

Local Land Trusts

Hastings Prince Edward Land Trust

Mission Statement

The mission of the Hastings Prince Edward Land Trust is to work with landowners, our community and other conservation partners to assist in protecting our heritage including wildlife habitat, connecting corridors, wetlands, woodlands, lakes, rivers, streams, scenic landscapes, farmlands and sugar bushes.

Thames Talbot Land Trust

Mission Statement

Our objective is to protect lands and waters of ecological, agricultural, cultural value through a variety of mechanisms. These include - but are not restricted to - land acquisition, conservation easements, landscape restoration and education.

Provincial Land Trusts

Ontario Farmland Trust

Mission Statement

The mission of the Ontario Farmland Trust is to protect and preserve farmland and associated agricultural, natural and cultural features in the countryside and to research and educate to further the preservation of these lands for the benefit of current and future generations

Conservation Authorities

Essex Region Conservation Authority

Mission Statement

By the year 2020, to achieve a sustainable, balanced environment with healthy watersheds, highlighted by clean creeks and rivers, thriving natural areas and productive agricultural lands.

ALBERTA

Alberta has 12 active land trusts, 2 national land trusts with local chapters, 3 province-wide land trusts, and 7 local land trusts. Although many land trusts work with agricultural landowners, only the following speak specifically to farmland or agricultural land conservation in their mission or vision:

Local Land Trusts

Foothills Land Trust

- Our Vision Is... Future communities of all species treasure and are sustained by our web of abundant wild and working landscapes.

Southern Alberta Land Trust Society

- “The Southern Alberta Land Trust Society (SALTS) is a locally-based charitable non-profit society dedicated to protecting the environmental, productive, scenic and cultural values of southern Alberta's eastern slopes, grasslands, woodland, and prairie regions.”

Western Sky Land Trust

- “Western Sky was requested by landowners and the general public. We are a non-profit charitable organization that has been specifically designed to meet the needs of the region and will focus on conserving watersheds associated with agricultural, natural, heritage, scenic and recreational values.”

UNITED STATES

National Agricultural Conservation Organizations

American Farmland Trust

- Mission: “AFT’s primary mission is to help farmers and ranchers protect their land, produce a healthier environment, and build successful communities.”
- Web site (<http://www.farmland.org/programs/protection/default.asp>):
 - **National Economy and World Food Security:** The U.S. food and farming system contributes nearly \$1 trillion to our national economy—more than 13 percent of the gross domestic product—and employs 17 percent of the labor force. World consumers of U.S. agricultural exports are expected to increase their purchases in the future. With a rapidly increasing world population and expanding global markets, saving American farmland is a prudent investment in the world food supply and the nation’s economic future.

- **Protection of the Environment:** Well-managed agricultural land supplies important non-market goods and services for our environment. Farm and ranch lands provide food and cover for wildlife, help control flooding, protect wetlands and watersheds and maintain air quality. They can absorb and filter wastewater and provide groundwater recharge. New energy crops even have the potential to replace fossil fuels. Read about our Agriculture and the Environment initiative.
- **Fresh, Healthy Food and Strong Communities:** Farms closest to our cities, and directly in the path of development, produce much of our fresh food—an astounding 91% of our fruit and 78% of our vegetables. And for many Americans, saving farmland is focused on protecting the quality of life in their communities—scenic and cultural landscapes, farmers' markets, recreational opportunities, local jobs and community businesses. Read about our Growing Local initiative.
- **Fiscal Stability for Local Governments:** New development requires services such as schools, roads and fire/police protection, whereas privately owned and managed agricultural land requires very few services. Cost of Community Services (COCS) studies (PDF) show that, nationwide, farm, forest and open lands more than pay for the municipal services they require, while taxes on residential uses, on average, fail to cover costs.

Local Land Trusts

Colorado Cattlemen's Agricultural Land Trust

- Tag line: "Protecting Open Space by Preserving Agriculture"
- Our Mission: "The Colorado Cattlemen's Agricultural Land Trust protects productive agricultural lands and the conservation values they provide by working with ranchers and farmers, thereby preserving Colorado's ranching heritage and rural communities."

Wyoming Stockgrowers Agricultural Land Trust

- "The Wyoming Stock Growers Agricultural Land Trust is the Cowboy State's first Wyoming-based statewide agricultural land conservation organization. We focus specifically on conserving rangelands and ranching operations in order to preserve Wyoming's wide-open spaces, natural habitats and rural communities they support."

Marin Agricultural Land Trust

- "Marin Agricultural Land Trust is a private, member-supported non-profit organization created in 1980 by a coalition of ranchers and environmentalists to permanently preserve Marin County farmland for agricultural use. MALT eliminates the development potential on farmland through the acquisition of conservation easements in voluntary transactions with landowners. MALT also promotes public awareness and encourages policies which support and enhance agriculture."

Yolo Land Trust

- “With our focus on protecting the farm, open space and habitat lands in Yolo County, Yolo Land Trust offers long-term solutions to difficult land preservation issues. Yolo County lands are wedged between the ever expanding Bay Area and Sacramento. At risk are prime agricultural soils, pure water, quiet country roads, and our rural atmosphere.”

California Rangeland Trust

- In 1998, a group of innovative ranchers within the California Cattlemen's Association founded the California Rangeland Trust. Recognizing that the environmental health of the state's rangelands and economic health of its rural communities are intertwined, they created an organization to provide and promote alternate ways to safeguard rangeland agriculture and the natural balance of its ecosystems. California Rangeland Trust is working to permanently protect hundreds of thousands of acres of California rangeland through agricultural conservation easements.
- California Rangeland Trust works closely with landowners to protect and enhance the environmental and economic benefits that these working landscapes provide. Landowners can be confident that California Rangeland Trust understands their concerns and will work with them to protect and improve the environmental quality of their land and the economic stability of their ranching operations.

Buckeye Conservancy

- “The Buckeye Conservancy is an organization of family farm, ranch and forest landowners and resource managers in the North Coast Region of California. We are dedicated to the promotion, communication, and implementation of those ideals and policies that support the ecologic and economic sustainability of natural resources and open space in family ownership.”

San Benito Agricultural Land Trust

- “In our community, we are fortunate to be surrounded by productive farms and ranches that make agriculture the County's largest industry. Not only do agricultural lands contribute economically to the community, but these lands also protect watershed and habitats as well as providing the open space that defines our county's heritage and our quality of life.
- The San Benito Agricultural Land Trust is devoted to providing financial options to landowners in order to protect the agricultural heritage of San Benito County. The Trust can protect land permanently and directly by accepting donations of conservation easements designed to meet the individual needs of landowners. As a non-profit, tax-exempt organization, the Trust is funded through membership, donations and grants.”

Lancaster Farmland Trust

- “Lancaster County’s old world charm stems from the heritage of its Pennsylvania Dutch residents, a culture known for its horse and buggy transportation, simplicity, and family-centered, religious way of life. The heritage of these Plain sect people goes back

hundreds of years. As a private, nonprofit organization, Lancaster Farmland Trust is dedicated to helping landowners preserve their farms and way of life for future generations.”

- “Why Preserve: When you support farmland preservation, you are not only helping farmers preserve the land that grows our food, but also protecting the character of the community and a very special way of life for our children and grandchildren. Agriculture in Lancaster County is more than just a business; it is part of a living history and cultural heritage. When a landowner preserves his farm, a legal document called a conservation easement is created which prevents residential, industrial, and commercial development of the land.”

Texas Agricultural Land Trust

- “Concerned that Texas is losing its rural lands faster than any other state in the country, leaders of Texas’ statewide agricultural, wildlife and landowner organizations came together in 2006 to create the Texas Agricultural Land Trust.
- With a Board of Directors who, as landowners themselves, understand the day-to-day challenges of farming and ranching, TALT promotes the conservation of open space, native wildlife habitats, and natural resources of Texas’ private working lands.
- TALT, a non-profit organization, today has partnered with landowners to conserve 98,600 acres. Created by farmers and ranchers for farmers and ranchers, TALT is proud to play a role in conserving Texas’ legacy of wide open spaces.”

PCC Farmland Land Trust

- “PCC Farmland Trust secures, preserves and stewards threatened farmland in the Northwest, ensuring that generations of local farmers productively farm using sustainable, organic growing methods.”
- “We are PCC Farmland Trust: a 501 (c)(3) land trust whose mission is to secure, preserve and steward threatened farmland in the Northwest, ensuring that generations of local farmers productively farm using sustainable, organic growing methods. The Farmland Trust takes its mission one step further than most land trusts by working to place farmers on rescued property, actively producing food for the local community.
- By preserving land for organic farming, PCC Farmland Trust is not only safeguarding local organic farms and conserving wildlife habitat, but is also supporting the continued livelihood of local farmers and the farming community, and increasing the availability of local, fresh organic foods. The Farmland Trust helps create community and fosters a sense of partnership between the people who grow food and the people who eat it.”

Brentwood Agricultural Land Trust

- “The Brentwood Agricultural Land Trust works with Contra Costa farmers and the community so that future generations in the Bay Area will have a local source of food.
- The rich agricultural lands on the urban edge of Contra Costa County include more than 12,000 acres of irrigated farmland located just fifty miles from the Bay Area. With rich delta soils, ample water and a year-round growing season, Brentwood farms have

provided food for the Bay Area since the 1880's. Today Brentwood farmers continue to grow a remarkable diversity of food, primarily fruits and vegetables.

- BALT permanently protects the fertile orchards and farms in this rapidly developing region with an active farmland conservation program. BALT promotes local farming and builds new markets for farmers through the Buy Fresh Buy Local marketing program. Working closely with local governments, BALT develops programs and policies that support a vibrant agricultural economy for Contra Costa farmers. Together with community partners, BALT is creating food connections between farmers and their urban neighbors."

Rio Grande Agricultural Land Trust

- "RGALT's goal is to protect New Mexico's natural resources and rural quality of life for the five New Mexico counties of Bernalillo, Sandoval, Sierra, Socorro and Valencia. RGALT is made up of farmers who live in the Middle Rio Grande Valley and are dedicated to the preservation of working farms, ranches, wildlife habitat and open space."

New York Agricultural Land Trust

- "Our mission is to conserve working farmland and promote a greater appreciation for the agricultural and forested lands and their associated natural resources that enrich our communities and connect future generations to the land, locally and statewide."

Oregon Sustainable Agriculture Land Trust (OSALT)

- The purpose of OSALT is to develop a sustainable agriculture.

Connecticut Farmland Trust

- The mission of the Connecticut Farmland Trust is to permanently protect Connecticut's working farmland.

Maine Farmland Trust

- Maine Farmland Trust is an award-winning statewide organization committed to strengthening farming in Maine.
- Our mission is to:
 - Protect and preserve Maine's farmland
 - Keep agricultural lands working
 - Support the future of farming in Maine

Vermont Land Trust

- "The mission of the Vermont Land Trust is to conserve land for the future of Vermont."
- Objectives:
 - Conserve land that supports or enhances the vitality of the communities and economy of Vermont.
 - Support farm and forest enterprises that foster consumer-producer connections, especially enterprises that increase product value through processing such as milling lumber, producing cheese, or making maple syrup.

- Promote thrifty, responsible, long-term, productive use of the land.
- Increase the opportunity for a diversity of people to own or use working farms and managed forestland.
- Support settlement patterns that give residents a sense of place, heritage and continuity; where vital villages and community centers retain the open space that surround and define them.
- Protect natural communities, biological diversity, and aquatic resources when achieving community land, farmland and forestland protection goals.