

Integrating Private Lands in Large Park Networks

CASE STUDIES AND RECOMMENDATIONS



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Land Acknowledgement

We recognize and acknowledge that the land we strive to protect is the traditional territory of First Nations, Metis and Inuit Peoples. We are grateful to First Peoples for taking care of the land across Turtle Island, which many of us have come to call home. We respect and are inspired by the deep connection of kinship that Indigenous Peoples have with the land.

The area we now call Canada consists of treaty lands and it is important that we learn about the history and continued presence of these treaties because we are all treaty people.

We acknowledge and condemn events such as Indian Residential Schools, Indian Day Schools, the Sixties Scoop, Missing and Murdered Indigenous Women, and many other violent acts committed since European settlers arrived on this land. The vibrant way of life of Indigenous Peoples and their connection to the land has been suppressed due to attempted genocide, colonialization, and assimilation. We acknowledge the truth of these events, continuing effects, and the enduring rights of Indigenous Peoples.

As we continue to work towards protecting the land that sustains us all, we will seek opportunities to listen to and learn from Indigenous leaders and Elders. We will support Indigenous-led initiatives that advance education, understanding, and reconciliation. We will further educate ourselves on Indigenous Knowledge Systems that can inform and support our work.

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We also want to thank the Indigenous Rights Holders, park planners, managers, and other park stakeholders who shared their experiences and feedback through interviews and a workshop. And the Green Infrastructure Ontario Coalition for their leading role on the previous reports in this series.

The Greenbelt Foundation is a non-profit organization dedicated to ensuring that Ontario's Greenbelt remains permanent, protected, and prosperous. Since 2005, the Greenbelt Foundation invests in strategic grants and programs, research and policy initiatives, as well as engagement and outreach activities. The Greenbelt Foundation makes investments in the Greenbelt's interconnected natural, agricultural and economic systems to ensure a working, thriving Greenbelt for all. Ontario's Greenbelt is over two million acres of farmland, forests, wetlands and rivers, working together to provide clean air, fresh water, and a reliable food source.

Toronto and Region Conservation Authority is one of 36 Conservation Authorities in Ontario, created to safeguard and enhance the health and wellbeing of watershed communities through the protection and restoration of the natural environment and the ecological services the environment provides.

Cambium Indigenous Professional Services is a Procurement Strategy for Aboriginal Business (PSAB) certified Indigenous-owned and operated organization based in Curve Lake First Nation (CLFN). Uniquely owned, operated, and all Indigenous staffed, our team has over twenty years of experience in First Nation economic development, environmental, and strategic planning projects. We are experienced and knowledgeable consultants, working primarily with Indigenous Communities and organizations, particularly projects that require Community engagement and direct engagement with Community leaders, members, and knowledge holders. Our philosophy is that every client and every project deserves an effective, sustainable, and affordable solution that fits their needs and forwards their capacity and future endeavours critical to them. Services from CIPS results in unique solutions that were provided by professionals with a broad range of expertise in multiple facets of Indigenous and Non-Indigenous environmental and cultural consultancy.



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Summary

Large parks are important greenspaces that provide residents with meaningful experiences in nature and contribute to biodiversity conservation and ecosystem functions. The COVID-19 pandemic further emphasized the value of natural areas for physical and mental wellbeing, and with the biodiversity and climate crisis, has contributed to an increased focus on creating and expanding large parks across Canada. The demand for recreation and need for biodiversity protection is highest in Canada's urban areas. ***This report considers opportunities to increase private land stewardship and integrate private lands into large park networks.*** In urban areas with fragmented natural landscapes, these networks can help expand the area of large parks and trail systems accessible to people and protect biodiversity through ecological corridors.



Photo source: Toronto and Region Conservation Authority (TRCA).



Despite eighty-nine percent (89%) of the country being unceded (Crown) land, most people live and own property along the southern border. The populations in these areas are growing and without park expansion the number of people using existing public greenspaces will be unsustainable. Southern Canada also has the highest concentration of biodiversity, much of which is at risk due to habitat loss and fragmentation from land use change. Private land stewardship is needed to protect habitat, strengthen climate resilience, and provide greater access to nature for urban and rural residents in areas of high private ownership. To achieve the maximum benefit, resources should be focused on properties that build or expand networks between parks to protect ecological corridors and connect trails to allow for the free movement of wildlife and people.

In Canada, most private land protection and park network integration is facilitated through non-profit land trusts, recreation and trail associations, or government programs. When choosing the most appropriate approach, landowners consider their reasons for participation and the permanency of options. The main motivations for landowners involve conservation, economic benefits, and access to liability insurance. Current stewardship and public access options for landowners include selling or donating their land, conservation easements, land use agreements for recreational access, or tax incentives for sustainable land management and conservation.

Key challenges to increasing the participation of private landowners involve the knowledge and financial barriers to finding and applying for programs, loss of development rights, and concerns about liability. In urban areas, private land conservation programs and partners should place a high priority on public access and allow for the inclusion of degraded lands and their potential to contribute to biodiversity and climate resilience. Private land stewards must also ensure Indigenous Rights and Responsibilities are upheld through proper Indigenous engagement, which have been largely overlooked in current programs for private stewardship. ***This report offers details on existing programs, five case studies to illustrate successful examples, guidelines for Indigenous engagement, and closes with recommendations for selecting the most wise approach, standards of practice, new legislation and the need for coordination to protect ecological corridors.***

This report is one of three developed to expand on suggestions and questions identified in the Greenbelt Foundation and Green Infrastructure Ontario Coalition's 2022 report *Improving Access to Large Parks in Ontario's Golden Horseshoe*. The reports in this series are:

- Mosaic Governance in Large Parks
- **Integrating Private Lands in Large Park Networks**
- Creating Large Park Networks to Meet Urban Challenges

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Terminology

30x30

Canada's goal to protect thirty percent (30%) of all terrestrial areas, inland water, coastal and marine areas by 2030. This goal replaces Canada's previous Biodiversity Target 1 and is in line with the United Nations Convention on Biological Diversity's Global Biodiversity Framework 30x30 target. Areas counted towards this goal include conventional protected areas, Indigenous Protected and Conserved Areas, and other effective area-based conservation measures.

Crown government

Canadian federal, provincial, territorial, regional, and municipal governments.

Ecosystem functions

The physical, chemical, and biological processes of natural ecosystems that cycle materials and energy. These functions contribute to benefits for human health and community wellbeing (e.g., stormwater retention, increased air quality, food provisioning, and carbon storage).

Indigenous Community

An umbrella term for First Nation, Inuit, and Métis who have distinctions amongst themselves of unique culture, language, and tradition, as well as Indigenous reserves, lands, and Peoples with inherent Rights.

Indigenous Nation

A body that represents Indigenous treaty Rights. A specific subtype of Indigenous Community.

Indigenous Protected and Conserved Area (IPCA)

Lands and waters where Indigenous governments have the primary role in protecting and conserving ecosystems through Indigenous laws, governance, and knowledge systems.¹

Indigenous Responsibilities

The task of upholding the original instructions that the Creator has given Indigenous Peoples on how to protect and preserve Mother Earth and share this knowledge informing others on how to do the same.

Indigenous Rights

Inherent, treaty, and other legal Rights held by Indigenous Peoples relating to autonomy, self-determination, and territory. In Canada, these Rights are recognized through Section 35.1 of the Canadian Constitution and in the United Nations Declaration on the Rights of Indigenous Peoples.

Indigenous Science

Distinct, time-tested, and methodological knowledge systems developed by Indigenous Communities with long histories of interaction with their territories. These systems include but are not limited to how to live sustainably in relationship with land. Also commonly referred to as Indigenous Knowledge.

Indigenous Ways of Knowing

An umbrella term for the diversity of Indigenous knowledge systems and approaches to teaching and learning.

Land back

Land back is a movement that has existed for generations with a long legacy of organizing and sacrifice to get Indigenous lands back into Indigenous hands. There are currently land back battles being fought all across Turtle Island, in the north and in the south.¹

Large parks

All natural areas and greenspaces that are over twenty (20) hectares, with high levels of vegetation, and accessible to the public. This includes unconventional parks, such as valley lands and natural corridors, but excludes private lands that are officially non-accessible. The minimum size threshold was selected to capture the largest park size class commonly found at the municipal scale to include both urban and rural large greenspaces.

Other effective area-based conservation measures (OECM)

A geographically defined area other than a protected area, which is governed and managed in ways that achieve positive and sustained long-term outcomes for the in-situ conservation of biodiversity, with associated ecosystem functions and where applicable, cultural, spiritual, socio-economic, and other locally relevant values.² These areas may have a primary mandate other than conservation.

Protected area

A clearly defined geographical space, recognized, dedicated, and managed through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem and cultural values.²

Rights Holders

Indigenous Peoples with inherent, treaty, and other legal Rights relating to autonomy, self-determination, and territory.

Seventh Generation

A philosophy developed by the Haudenosaunee Confederacy that requires leaders to consider how actions will impact the next seven generations of descendants as a way to build accountability and sustainability into decision-making.³

Traditional Territory

The geographic areas identified by an Indigenous Nation to be the area of land which they and/or their ancestors traditionally occupied or used.

Two-Eyed Seeing (*Etuaptmumk* in Mi'kmaw)

A concept developed by Mi'kmaq Elder Dr. Albert Marshall as the practice of “learning to see from one eye with the strengths of Indigenous knowledges and ways of knowing, and from the other eye with the strengths of mainstream [Western] knowledges and ways of knowing, and to use both these eyes together”.⁴

1. See: <https://landback.org/>. 2. See: Pathway to Canada Target 1's 2018 report, *One with Nature: A Renewed Approach to Land and Freshwater Conservation in Canada*. 3. See: <https://www.haudenosauneeconfederacy.com/values/>. 4. See: Bartlett, Marshall & Marshall (2012).



Introduction

Importance of Private Lands in Large Park Networks

To maintain or increase access to nature, especially in urban areas, private land conservation and integration into park networks is necessary. Private land stewardship programs exist that target different landowner motivations and provide various incentives for conservation and public access. In Canada, private land conservation protects significant hectares of ecologically sensitive land. Targeted efforts by land trusts include the protection of private lands adjacent to national and provincial parks and local environmentally sensitive areas, and connectivity between these features. For example, the Nature Conservancy of Canada protects 15 million hectares of land.⁵ Government policies and programs encourage and nurture conservation attitudes and provide financial incentives but need to be enhanced to address specific challenges to participation in urban areas and liability concerns that present a significant barrier to public access.

Indigenous Nations and Communities need to be meaningfully engaged in private land stewardship projects to respect inherent Rights and Responsibilities. It is important to honour that Indigenous Peoples were the first peoples of this land we now call Canada. These lands were seized under the Doctrine of Discovery, which was recently rescinded by the Pope, and has led to discussions regarding its potential impact on Indigenous land Rights and sovereignty. In Canada, the two main categories of land are unceded (Crown) land and private land. Unceded (Crown) land consists of all lands Indigenous Peoples never signed their Rights away to but have been seized and held under claimed legal authority of the Crown, despite not being recognized by Indigenous Peoples. Private land is land that an entity who is not the government holds title or deed over. Program changes are needed to protect Indigenous cultural and spiritual sites.

This report was developed to:

- Explore non-profit, recreation association, and government programs for private land stewardship and integration into park networks;
- Determine the advantages and challenges of different programs for biodiversity and public access.
- Identify case studies to demonstrate successful uses of existing options, innovations, or gaps in available programs;
- Assess current approaches for protecting Indigenous sites on private lands and engaging Indigenous Communities with inherent Rights or title to Traditional Territories;
- Provide recommendations to support the selection of programs based on incentives and motivations, use of standards and wise practices, and the creation of new programs and legislation to enable action.

5. See: <https://www.natureconservancy.ca/en/what-we-do>.



Context

This report is a follow-up to the *State of Large Parks in Ontario's Golden Horseshoe* report, published in 2019, and the *Improving Access to Large Parks in Ontario's Golden Horseshoe* report, published in 2022. The reports presented an analysis of current and planned large parkland distribution across the region and found that the supply of large parkland per capita is declining. Without action, this trend will significantly reduce access to nature for residents. Low-Income neighbourhoods and neighbourhoods with high ratios of Indigenous populations have the lowest accessibility. The reports also found a growing gap in government capacity for planning, funding, establishing, and managing large parks and identified strategies to overcome these barriers including regional coordination, innovative approaches and partnerships to increase the size and quality of large parks, centring equity and accessibility in large parks planning, and improving effective funding mechanisms. Similar trends and obstacles to large parks planning are expected across southern Canada's urban areas. It is unlikely that governments alone will have the capacity to fund and manage the expansion needed.

The physical and mental wellbeing benefits of accessing large parks, especially greenspaces in urban areas, include reduced noise and visual stimulation, physical activity, recreation, and increased public appreciation of nature. The creation and expansion of large parks is also an important opportunity to support additional national-provincial priorities. Large parks can advance reconciliation with Indigenous Nations and Peoples through pragmatic engagement, meaningful consultation, and acceptance of their inherent and treaty Rights to manage their own land. Large parks are essential to Canada's commitment to reverse biodiversity loss and climate change, such as through protecting thirty percent (30%) of the country's lands and oceans by 2030 (30x30) and developing a National Program for Ecological Corridors. They can also be an ecologically sustainable tourist attraction, supporting the local economy.

This report explores integrating private lands into park networks. As parks, recreation and biodiversity and climate change programs develop, it will be important to include private lands, especially in urban and near-urban areas. Interest in a deeper understanding of the options for private land stewardship, integration into park networks, and public access to natural spaces on private lands were the motivations for this new report.

Similar to the 2022 report, the definition of large parks in this report series includes all natural areas and greenspaces that are over twenty (20) hectares (a hectare is twice the size of a football field), with high levels of vegetation, and accessible to the public. This includes unconventional parks, such as valley lands and natural corridors, but excludes private lands that are officially non-accessible. The minimum size threshold was selected to capture the largest park size class commonly found at the municipal scale to include both urban and rural large greenspaces.



Methodology

This report involved desktop research, case study interviews, and a validation workshop. The research was a national review of private stewardship programs provided by non-profit land trusts, recreation associations, the federal government, and Ontario as an example of programs provided by provincial governments. This allowed the report authors to identify existing programs, incentives, and motivations for private land conservation, and the advantages and challenges with these frameworks. The Indigenous perspectives that have influenced this report contain varied Indigenous voices including Anishinaabe, Haudenosaunee, and Métis. These perspectives also portray individual perspectives based on lived experience in which reviewers were strategically identified. Examples and case studies were selected to illustrate various types of programs. Case studies missing critical information were supplemented with an interview as necessary.

A workshop was held to validate the scope and feasibility of our recommendations with Indigenous Rights Holders, park planners, managers, land trusts, and other park stakeholders across Canada. We presented the initial findings and key case studies from each report and then separated into groups to discuss participants' experiences across the following topics: mosaic governance, Indigenous co-governance, integrating private lands into large park networks, and using the motivations of access and conservation to create and expand large parks. These conversations were facilitated to identify key barriers and solutions, capture existing programs, and help propose reasonable recommendations.



Photo source: Toronto and Region Conservation Authority (TRCA)

How Private Lands Expand Large Park Networks

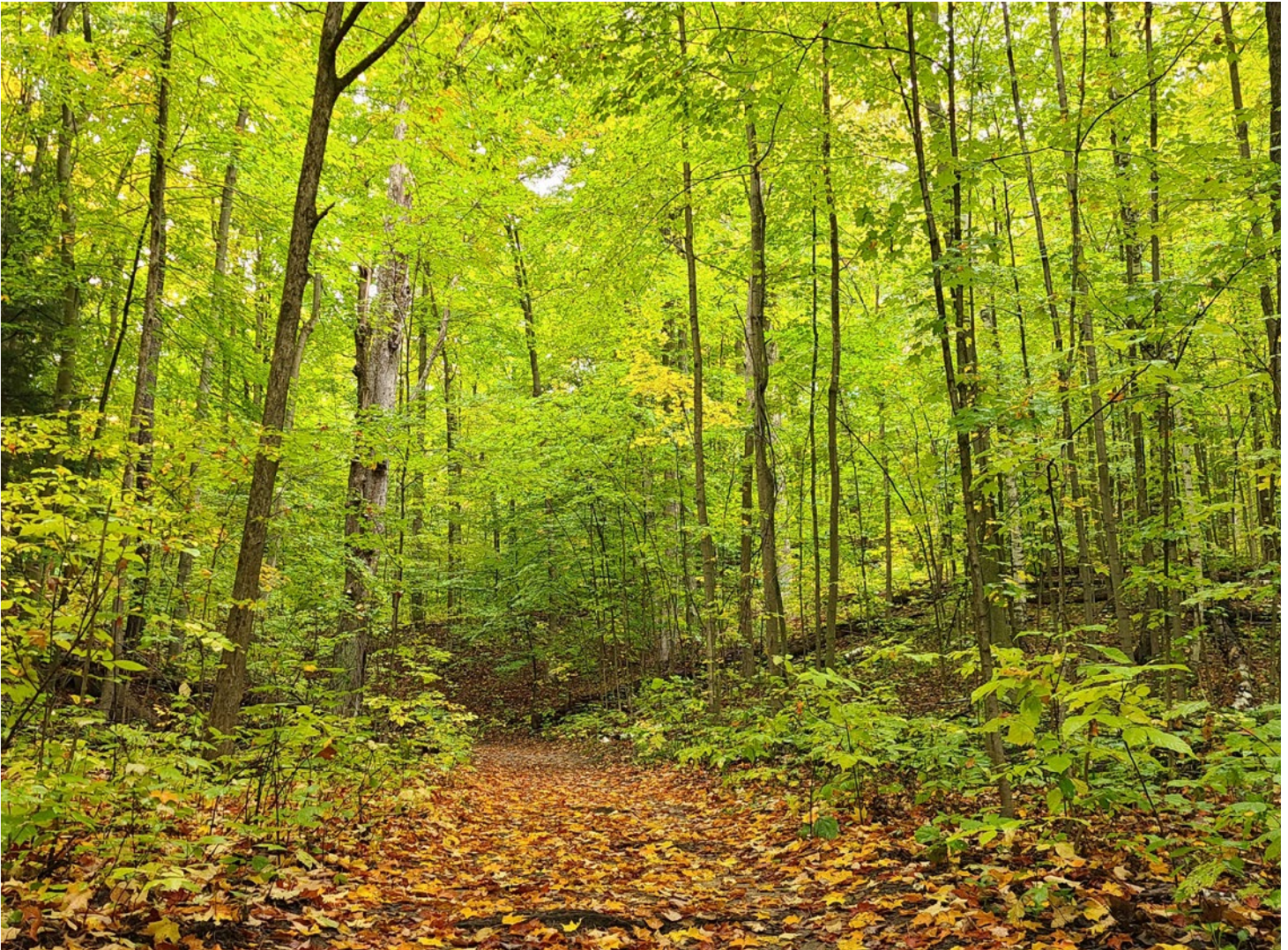



Photo source: Toronto and Region Conservation Authority (TRCA).

Private lands have an important role in conservation, substantially increasing the habitat available for species, and providing essential ecological connectivity between protected areas (PAs) and parks. In Canada, unceded (Crown) land is disproportionately distributed in northern regions, whereas many private landowners live along the southern border. Due to the warmer climate, southern Canada contains a wider variety of ecosystems such as wetlands, grasslands and forests, and high biodiversity, but they are at risk due to habitat loss from land use change.⁶ ***Here, government owned parks and PAs are not enough to conserve habitat and biodiversity long-term, and it is unlikely that all properties would be available for sale or that governments would have the financial resources to buy multiple private lands. Private land is needed to fill in the gaps.*** Several economic tools and government programs are available to incentivize the participation of private landowners for conservation, providing low-cost options to support large park networks and leverage private investments.

6. See: https://d3n8a8pro7vhmx.cloudfront.net/greenbelt/pages/12322/attachments/original/1627576318/GB_SONC_FINAL_report_E-ver.pdf?1627576318



Land trusts are key partners in expanding large park networks. While private landowners can access conservation incentives directly through government programs, most private land stewardship activities are organized by land trusts which are non-profit, charitable organizations who focus on the acquisition of land or interests in land for conservation.⁷ The largest land trust in the country, the Nature Conservancy of Canada, protects 15 million hectares of land.⁸ Land trusts can be restricted to specific regions or ecological features (e.g., the Bruce Trail Conservancy on the Niagara Escarpment). Groups like the Ontario Land Trust Alliance and the Canadian Land Trust Alliance have developed standards for practice.⁹

The diversification of land trusts in Canada to include Indigenous and farmland land trusts supports increased participation of landowners by emphasizing benefits beyond conservation. Tools such as *other effective area-based conservation measures* may support greater involvement of institutional and corporate landowners. Government programs are also starting to focus on the management of private lands for additional community benefits, including ecosystem functions such as carbon storage. While trail-focused land trusts support public access to private lands, generally land trust public access is informal and not a priority. Efforts to integrate private lands into large park networks should support an increase in public access, including access for Indigenous Nations and Peoples. Indigenous Nations and Communities are particularly concerned about protecting traditional hunting grounds, trap lines, and fishing areas that are within Traditional Territories but are not designated as reserve lands. Indigenous Nations and Peoples have developed a mistrust of governments over the centuries since colonization. Therefore, there is an opportunity for increased private land stewardship, as Indigenous Nations and Peoples may want to work with land trusts and landowners instead of governments.

There is growing interest in urban and near-urban areas to focus resources on private lands that create ecological corridors between large parks. This will require connecting local spatial data to develop comprehensive maps of known corridors, PAs, and privately protected land. The United States is more advanced in this regard, having created the National Conservation Easement Database (NCED), which compiles data from land trusts and public agencies to help identify currently protected land and plan strategically for land acquisitions and partnerships. For example, the Almond Marsh case study was successful due to a collaborator for NCED volunteering geospatial work for the local land trust.¹⁰ Once lands are connected, resources can be devoted to expanding access through studies on habitat sensitivity and mitigation requirements, and the transit, parking, trails, and other infrastructure needed to support visitors. This is easier to do on protected properties adjacent to parks with existing access, as some of the research and resources may already be available and recreationists are familiar with the area. Enhancing and creating local trail systems can expand protection and access through the network. Regional coordination and broader partnerships including private land conservation partners will need to participate. Special consideration will need to be taken to emphasize what benefits Indigenous Nations and reserve lands would gain through participation in the ecological corridor and trail network aspects of increased public-private connectivity.

7. See: Logan & Wekerle (2008). 8. See: <https://www.natureconservancy.ca/en/what-we-do>. 9. See: Canadian Land Trust Alliance's 2019 report, *Canadian Land Trust Standards and Practices*; <https://olta.ca/land-trust-members/>. 10. See: *The National Conservation Easement Database's 2017 StoryMap, Conservation easements and the National Conservation Easement Database*, <https://site.tplgis.org/NCED/storymap/index.html>.



Programs for Private Land Stewardship and Public Access to Nature

Private lands can be integrated into large park networks through a variety of programs. Voluntary stewardship with non-profits or recreation associations have great public appeal, especially for landowners concerned about government involvement on their land. Still, these programs may not achieve sufficient uptake to meet conservation objectives. Desirable incentives and public education campaigns are required.¹¹

Examples of successful private land stewardship programs explored in this section include donating land, conservation easements, and land use agreements. Different approaches provide various incentives depending on the landowners' objectives, such as protecting land from development in perpetuity, financial and tax incentives, protection from liability, free access to the rest of a network, or operational support for trail maintenance and restoration.

Fee Simple Donation

The simplest way for private land to benefit the public is a pure donation of property to a land trust or other organization. Here, title for a portion, or the whole property, is transferred from the landowner. There are similar options such as reserving a "Life Estate" or "Retained Interest" that would allow the landowner to live on the property for the rest of their life.¹² However, depending on how the land trust is organized, this land may no longer be private following a donation.

The financial benefits of land donation can depend on case-specific factors such as which province/territory the property is in, if the land is being donated to a land trust registered charity, or if the land meets ecologically sensitive criteria for government programs like the Ecological Gifts Program. Regardless, private landowners may be incentivized by the desire to:

- Protect land from development in perpetuity;
- Further Truth and Reconciliation by donating lands to Indigenous-led or Indigenous-integrated land trusts, as a meaningful gesture towards establishing and maintaining respectful relationships and rectifying the past for a better future;
- Increase the value of surrounding properties as they are now adjacent to protected lands that may be connected to parks, allow for recreational access, or provide ecosystem functions;
- Be perceived as environmentally conscious.

For landowners who are motivated by conservation, it is essential that the land trust or other organization has well-defined, ecologically sound conservation goals.¹¹

Despite the donation itself being a non-monetary transaction, there are fees associated with assessing the property and legal support. Many land trusts are therefore reliant on government grants which may favour or require lands that connect conventional parks and PAs. Properties adjacent to accessible parks may be more likely to be opened for recreation as well. While donated land is not inherently available for public access, the requirement that it be opened for public use can be given as a condition of donation.

11. See: Kamal et al. (2015). 12. See: <https://kawarthalandtrust.org/protecting-our-land/land-protection-options/>.



Conservation Easement

The most popular, legally binding agreement for private lands in protected networks is a conservation easement. This is an agreement between the landowner and a land trust or government agency, which provides an economic benefit, such as tax relief, to the landowner in exchange for them relinquishing development rights over the land to protect habitats. These agreements can be tailored to restrict other uses or practices that could damage the natural features of the land or allow specific uses such as trail access. They can be applied to the entire property or a portion.¹³ For example, a private landowner from Kirkfield, Ontario dedicated 92 out of 100 acres under a conservation easement, with the provision that the three Mississauga First Nations of Treaty #20 can enter to harvest. The advantage of this approach for conservation is that these restrictions on the land exist in perpetuity, even if the land is sold or inherited by others.¹⁴ The landowners may be motivated by the same factors listed under fee simple donation above, however, a key incentive for conservation easements tends to be the economic benefits.

The main economic benefit for the landowner comes from the reduction in property value due to the loss of development rights, which reduces the landowner's tax burden. Some easements also include a lump sum for the sale of the development rights which sometimes comes close to the value of the land itself, but allows the landowners to maintain ownership of the property with the new development restrictions in place. In addition, conservation easements may be eligible for an income tax deduction if they are considered a charitable donation.¹⁴

Even with existing financial incentives, conservation easements still have low participation rates because of the loss of landowner rights, long timelines to draft and negotiate agreements, and the variable costs associated with property assessment, legal fees, and long-term monitoring and enforcement. Depending on which province or territory a property is in, there can also be a lack of explicit pathways for recognizing conservation easements and allowing for reduced property taxes. To increase landowner uptake of conservation easements, the process could be streamlined to reduce costs, but if landowners want something less permanent, they may be interested in another approach.¹⁵

Public access, even on part of the property, can be included in conservation easements as long as conservation goals are achieved. Land trusts in Canada should follow the Canadian Land Trust Alliance standards for practice when considering a new conservation easement agreement or monitoring established easements. These standards include guidelines for ensuring there is adequate funding to support the conservation of land, annual compliance monitoring and enforcement, and contingency strategies for if the land trust ever ceases to exist.¹⁶ Meeting these standards is essential to manage lands for biodiversity, especially if the properties are experiencing increased visitors and negative impacts due to climate change, which can degrade ecosystems. Land Trusts in Canada and the US are also developing wise practices to optimize carbon storage through conservation easements. Additionally, Indigenous Peoples practice Seven Generation planning, taking into account the potential impacts of current decisions on future generations. Working with Indigenous Nations and Peoples will require not only the adoption of existing standards and guidelines, but engaging in the integration of Indigenous Science and other Knowledge and perspectives into all guiding documents.

13. Ibid. 14. See: Kamal et al. (2015). 15. See: Southern Ontario Nature Coalition's 2021 report, *Near-Urban Nature Network: A Solution to Climate Change and Biodiversity Loss*. 16. See: Canadian Land Trust Alliance's 2019 report, *Canadian Land Trust Standards and Practices*.



Case Study

Almond Marsh conservation easement collaboration, Illinois, USA

Almond Marsh, just northwest of Chicago, Illinois, is a conservation easement collaboration that protects a 704-hectare wildlife corridor around established forest and prairie preserves, including sixty-five (65) hectares of wetland complexes. The corridor consists of thirty-three land parcels with individual agreements held by private landowners, the local government, the Illinois Nature Preserves Commission (State government), the Lake County Forest Preserve District, and Barrington Area Conservation Trust. The motivation to participate in the collaboration may vary between parties, but together they are successfully protecting an ecological corridor.

Five of the parcels, approximately 15 percent (15%) of the total area, are open to the public, with the rest closed to manage for biodiversity.¹⁷ To increase access to nature, the other parcels could be assessed for sensitivity to disruption due to recreation, and potentially opened. Specifically, the marshes are considered a birding hotspot, but lack access other than roadside viewing. This could be an optimal location for a fenced boardwalk and viewing platform if a study found the ecosystem would be tolerant of increased human use. Risk and impact assessments are a necessary step in any potential human intervention, regardless of how small a development may appear, to ensure that the preservation and protection of ecosystems remains the central goal.

Indigenous Lens: What constitutes a tolerant ecosystem can vary depending on the assessment used. Two-Eyed Seeing and Seven Generational thinking would need to be incorporated into any assessments for Indigenous Peoples to agree that an ecosystem can sustain itself long-term.

This case was chosen to show how a large network of conservation easements signed by public and private landowners can protect a wildlife corridor.

Land Use Agreement with a Recreation Association

A non-legally binding approach to private land integration in large park networks is a land use agreement with a recreation association. Availability of these programs vary, but they could be a more widely acceptable way to include private lands in nature networks and increase public access. These lands can steer visitors away from ecologically sensitive areas while also helping to restore more degraded lands within a network. Landowners who join trail systems in the interest of public access may also be encouraged over time to protect the land for biodiversity purposes. For example, The Bruce Trail, Canada's longest footpath, runs 900 kilometers along the Niagara Escarpment in Ontario's Greenbelt and sustains and restores thousands of hectares of natural areas through property management plans. Nearly 20,000 acres have been protected.

While private lands in Canada can be accessed for recreation in many circumstances, private landowners often block access through signage and fencing to reduce the likelihood of a liability lawsuit. The benefits of allowing public access through a recreation association's land or trail network can include:

- Expanding or creating a park network;
- Receiving volunteer maintenance and restoration services;
- Obtaining coverage from an association's liability insurance policy; or
- Owning a limited duty of care to recreationists under Occupiers' Liability Acts.¹⁸

17. See: <https://site.tplgis.org/NCED/storymap/index.html>. 18. See: section below on Liability Issues for Private Lands in Park Networks for more information about Canada's Occupiers' Liability Acts.

Case Study

Ontario Federation of Snowmobile Clubs trail network, Ontario

Snowmobiling is a popular winter hobby and mode of transportation in Ontario. An attractive feature for many participants is that there is a large trail network through rural lands, including over 15,000 private properties, which is organized and maintained by the member groups of the Ontario Federation of Snowmobile Clubs (OFSC). To access the trails, riders require a permit to track the number of users and help cover the costs associated with maintenance and insurance. The latter point is key: as an incentive for landowners to consent to trails on their property, the OFSC provides coverage under a Third-Party General Liability Policy for any legal liability claims related to the use of their trails by riders. The relationship with private landowners is formalized through a Land Use Permission Form, outlining the obligations of the OFSC's member club, which in addition to insurance includes the trail system being monitored, maintained, and groomed by club volunteers.¹⁹ While this system does not have financial incentives for landowners, it removes barriers for landowners to join by providing legal protection and free labour. This is especially beneficial for landowners who may be experiencing recreationists trespassing on their property already and are concerned about liability. The Ontario Trespass Act and the Tort of Trespassing both state that property lines that possess qualities such as a clearly defined path, with no fencing or signage prohibiting entrance, during daylight, constitute Implied Permission under the law on the part of the landowner, and a trespasser can argue they were not aware they had crossed onto private property.²⁰ These concerns about liability can be relieved by working with an organization like the OFSC.

The success of this program may be due to four main features:

1. Snowmobiling is a winter activity, reliant on snow, and so not in conflict with other land uses such as agriculture.
2. The OFSC's member clubs target specific landowners with properties that would be beneficial to add to the trail network, instead of waiting for landowners to find the program on their own.
3. The existence of the OFSC as a formal governing body provides legitimacy for the land use request.
4. The OFSC's member clubs can provide evidence of the long-term effectiveness of their program in protecting landowners and their property from damage.

This program serves as a template that could be copied for other types of recreation. The main adjustment that may be required would be to employ techniques such as specific trail restrictions during key times of year if the recreational activity does not have a natural, seasonal break to protect land uses such as agriculture. It is also of utmost importance to Indigenous Communities and conservationists that these networks are monitored to ensure recreation is not degrading habitats.

19. See: <https://ucsr.ca/landowners/>. 20. See: *Trespass to Property Act, RSO 1990, c T.21* (2016).

Indigenous Lens: Indigenous Nations and Communities affiliated with lands in private recreation or similar networks have Rights and Responsibilities. Inclusion and incentives to participate are needed if the network is already in place, invitations to meaningfully collaborate if the network is being planned. Participation will ensure that the network's policies take Indigenous priorities and requirements into account to guarantee adherence by users and enable Indigenous Peoples to continue to protect and steward lands as Responsibilities given by the Creator. Public access could be a point of contention, particularly if Indigenous Nations and Peoples are not members of the governing body from the initial planning stage.

This case was selected to highlight how recreation associations can be successful in building large trail networks due to the benefits they offer private landowners.



Photo source: Shutterstock.

Governmental Programs and Incentives for Private Land Stewardship and Public Access to Nature

Photo source: Toronto and Region Conservation Authority (TRCA).



Government programs for private land stewardship support similar models used by land trusts and recreation associations, such as fee simple donations or conservation easement agreements. In these programs, private landowners are incentivized financially and/or through their desire for conservation outcomes. Land trusts often promote these programs as added inducements. Governments also provide tax incentive programs for land management that is not permanent, such as sustainable forest management. These programs are focused on protecting biodiversity on private lands rather than access to nature. Regardless, public access should be a secondary objective where ecosystems can tolerate disturbance. This prioritization mirrors the perspectives of Indigenous Nations and Peoples who must be engaged in these programs as they affect Traditional Territories.

Ecological Gifts Program

Landowners of property that meets national and regional criteria for ecological sensitivity can donate or sign a conservation easement agreement through Environment and Climate Change Canada's Ecological Gifts Program in return for tax benefits. These agreements can be signed directly with federal, provincial, territorial, municipal, or Indigenous governments, or with registered charities such as land trusts. The ecological sensitivity criteria are primarily based on existing designations, such as areas identified as ecologically significant or important (e.g., Ontario's Areas of Natural and Scientific Interest, UNESCO World Heritage Sites or Biosphere Reserves, or a Wetland of International Importance under the Ramsar Convention); areas zoned for biodiversity; or land adjacent to provincial or national parks, wildlife areas, migratory bird sanctuaries, etc. Landowners can also make a case for why their land is ecologically sensitive based on unique geography, habitat, or species.

“Since Environment and Climate Change Canada’s Ecological Gifts Program was created in 1995, 216,000 hectares of land, valued at \$1 billion, has been donated.”

As with other conservation easements, there are economic benefits for landowners, and these apply as well for fee-simple donations to the Ecological Gifts Program. For corporate donors, the amount of their ecological gift can be deducted from their taxable income. An individual’s gift is converted to a non-refundable tax credit, with a fifteen percent (15%) rate applied to the first \$200 of the donor’s gift for the year and twenty-nine percent (29%) to the balance. In addition, most provinces will also reduce their provincial tax in response to the reduction in the federal tax payable. While for most gifts the taxable portion is fifty percent (50%) of the capital gain, in the case of an ecological gift it is reduced to zero. Since the Ecological Gifts Program was created in 1995, 216,000 hectares of land, valued at \$1 billion, has been donated. As of 1995 to the end of March 2022, there had been 580 CEAs or life interests, covering 98,000 ha, and worth \$361 million donated through the federal Ecological Gifts Program.

Lands protected as ecological gifts are not automatically accessible to the public. As with donations and conservation easements, public access could be included as a condition of donation or agreement. Additionally, the Ecological Gifts Program states the creation of a network of PAs across Canada is the overarching goal, which may suggest some degree of access similar to what is found in conventional parks.²¹

Natural Heritage Conservation Program – Land Trusts Conservation Fund

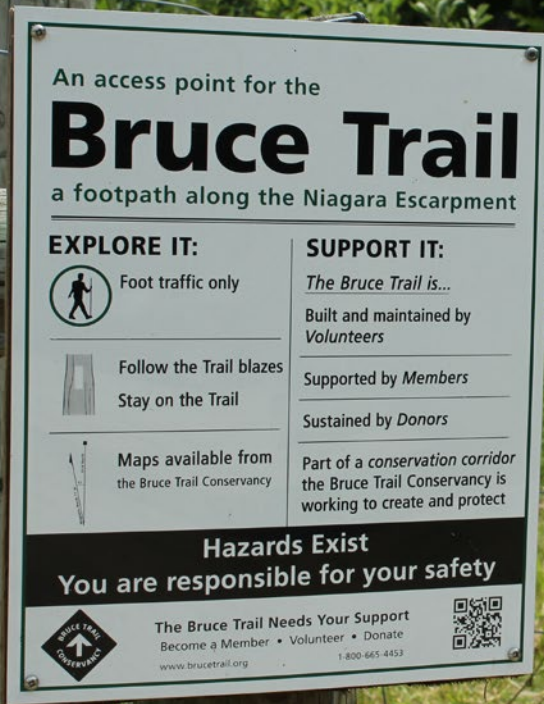
The federal government invested \$100 million from the Canada Nature Fund over four years (2019-2023) in the Natural Heritage Conservation Program (NHCP), a public-private partnership created to encourage private land protection to help meet Canada’s 30x30 goal and contribute to the conservation of habitat for species protected under the Species at Risk Act. The program was set to end in 2023 but has been extended with a further \$18 million until 2026. The partners in this program include the Nature Conservancy of Canada, Ducks Unlimited Canada, Wildlife Habitat Canada, Indigenous Communities, and regional and local land trusts represented by the Canadian Land Trusts Working Group. These partners provide a funding match of two dollars for every dollar of federal funding.²²

One component of NHCP is the Land Trusts Conservation Fund which supports Canadian land trusts in securing private lands, covering the costs of land purchases, donations, and conservation easements. The idea behind this approach is that land trusts have a top-down view of which properties would be most beneficial to protect, based on their connectivity, sensitivity, or rare habitats, rather than landowners who may only have one piece of land to protect. Again, these properties are not automatically open to the public, but conserved lands included in a network may be more likely to be opened for access, especially if a large park that is already accessible is part of the network. In the first three years of this program, over 9,600 hectares of land were protected.²³

“The Natural Heritage Conservation Program’s Land Trusts Conservation Fund supports Canadian land trusts in securing private lands, covering the costs of land purchases, donations, and conservation easements. In the first three years of this program, over 9,600 hectares of land were protected.”

21. See: <https://www.canada.ca/en/environment-climate-change/services/environmental-funding/ecological-gifts-program/overview.html>.

22. See: <https://www.canada.ca/en/environment-climate-change/news/2019/04/the-natural-heritage-conservation-program.html>. 23. See: <https://whc.org/ltcf/>.



Case Study

Bruce Trail Conservancy's MapleCross Nature Reserve at Canning's Falls, Caledon, Ontario

Through the Natural Heritage Conservation Program's Land Trusts Conservation Fund and matching donations from MapleCross (an independent conservation fund), the Bruce Trail Conservancy was able to purchase a twenty-eight (28) hectare property designated an Area of Natural and Scientific Interest (ANSI) for earth science values in Caledon, Ontario.²⁴ The land contains four waterfalls and has been a site of concern around liability relating to public access. While the previous private landowners had granted access to the waterfalls for multiple generations, the number of visitors began to increase in recent years causing the trampling of the undergrowth and likely causing the extirpation of rare plant species. Visitors also made fires, littered, drew graffiti, and got lost multiple times resulting in rescues by police. This prompted the landowners to sell to the Conservancy to remove their liability and to allow experts to restore the land. Since the Conservancy acquired the property, they have installed a security team to block further trespassing, to ensure full restoration. The Conservancy's long-term goal is to connect this property to the Bruce Trail—a 900-kilometre continuous footpath along the Niagara Escarpment UNESCO World Biosphere in southern Ontario—and allow for recreational access. Before this is possible, they are creating a long-term management plan by completing ecological studies to determine what management actions are required to conserve the habitat and safely allow for visitors and the responsible use of these lands.²⁵

Indigenous Lens: The long-term scope, immediate protection, and restoration of this site, with potential public access pending determination of an acceptable balance between conservation and public safety, aligns with Indigenous values and perspectives.

This example was chosen to highlight the challenges of sustainable public access and the role of land trusts in management for conservation and recreation.

24. Note, the Bruce Trail Conservancy is further explored as a case study in another report in this series: *Mosaic Governance in Large Parks*; see: *Wildlife Habitat Canada's 2021 report, 2020-2021 Natural Heritage Conservation Program*. 25. See: Wells (2020).

Canada's 30x30 Goal – Other Effective Area-based Conservation Measures

Canada's 30x30 goal is to protect thirty percent (30%) of all lands and oceans by 2030. To reach this goal, they count conventional protected areas (PAs) such as provincial and national parks, but also Indigenous Protected and Conserved Areas (IPCAs), and "other effective area-based conservation measures" (OECMs).²⁶ OECMs are public or private lands that have a primary mandate other than conservation, but otherwise meet all the standards of a PA, including effectively conserving biodiversity. Common examples include sustainably managed forests or parks built for recreation but with sufficient area to protect nature.

The recognition of private OECMs is still a work in progress. Some options for landowners are to apply for OECM status on their own, work with a land trust (through a donation or conservation easement) who will assess and apply for OECM status, or to certify their forests with one of Canada's three certification programs which require that areas of significant or high conservation value are set aside and may be eligible for OECM designation.²⁷ There is no expectation of public access for OECMs, but private landowners can allow for any type of access and recreation as long as conservation remains successful. This system could be attractive to Indigenous Nations if they are able to develop the capacity to manage it themselves. Retaining primary Rights Holder status is critical to Indigenous Peoples. The ability to retract access if the area is not respected must also be retained, using Indigenous Science and other Knowledge to determine if public access is having negative consequences.

Beyond 30x30, the federal government has committed to the Kunming-Montreal Global Biodiversity Framework, which includes the target of actively restoring thirty percent (30%) of all degraded lands by 2030; and Parks Canada has created a National Program for Ecological Corridors to protect species at risk and increase climate resilience. As these programs develop, it will be important to include private lands especially in urban and near-urban areas to restore and protect important habitats.



Photo source: Toronto and Region Conservation Authority (TRCA).

26. Note, 30x30, protected areas, Indigenous Protected and Conserved Areas and "other effective area-based conservation measures" are further explored in another report in this series: *Creating Large Park Networks to Meet Urban Challenges*. 27. See: National Advisory Panel's 2018 report, *Canada's Conservation Vision: A Report of the National Advisory Panel*.



Managed Forest Tax Incentive Program

In Ontario, there are two incentive programs to protect lands, the first of which is the Managed Forest Tax Incentive Program (MFTIP). The MFTIP applies to landowners with four or more (>4) hectares of forested land. In return for being taxed at twenty-five percent (25%) of the municipal tax rate set for residential properties, participating landowners must prepare and follow a ten-year Managed Forest Plan approved by the Ministry of Natural Resources and Forestry. Enrolment in the program must be renewed every ten years and is not transferable to a new owner.²⁸ An advantage of requiring the Managed Forest Plan is that it involves landowners considering the long-term management of their property.²⁹ As of 2020, 751,000 hectares on 18,950 properties were conserved through this program.³⁰

While public access is not required on lands participating in the program, management activities included in the Plan may include access for recreation in addition to tree planting and management, harvesting, wildlife management, and protecting environmentally sensitive areas. Activities must be carried out according to “good forestry practices” which are those appropriate for the forest and that minimize detriments to forest values including recreational opportunities of the landscape as outlined in Ontario’s Forestry Act.³¹ The open nature of the Plan allows for co-operation with local First Nations and Indigenous Peoples to produce a Forest Management Plan that fully integrates Western and Indigenous Science to achieve more successful and sustainable practices. While not currently stated in the program guidelines, landowners must also acknowledge, and include in their planning, the lawful access of all Indigenous Peoples who have treaty Rights in the area, including Rights to hunt, fish, trap, and forage to protect Indigenous cultural and traditional practices.

One barrier to MFTIP for landowners is that they are responsible for paying for the development of a Managed Forest Plan. To reduce this cost, Ducks Unlimited will provide a forty percent (40%) reimbursement (up to \$600) towards an approved Managed Forest Plan if the land includes a wetland over two (>2) hectares that meets their criteria for waterfowl habitat.³² A similar program could be developed for other types of land to reduce the financial burden on landowners. If practices incorporate Indigenous practices, potentially protecting culturally significant sites with no title claims, First Nations and Indigenous organizations could become involved.

“As of 2020, 751,000 hectares on 18,950 properties were conserved through Ontario's Managed Forest Tax Incentive Program.”

28. See: <https://www.sps.mnr.gov.on.ca/>. 29. See: Southern Ontario Nature Coalition's 2021 report, *Near-Urban Nature Network: A Solution to Climate Change and Biodiversity Loss*. 30. See: <https://sobr.ca/indicator/participation-provincial-tax-incentive-programs/>. 31. See: <https://www.ontario.ca/page/managed-forest-tax-incentive-program-guide>. 32. See: <https://www.ducks.ca/resources/industry/managed-forest-tax-incentive-program-wetland/>.

Conservation Land Tax Incentive Program

The second incentive program in Ontario is the Conservation Land Tax Incentive Program (CLTIP), which supports private stewardship by providing 100 percent (100%) tax exemption on eligible portions of property. This land must be at least 0.2 hectares and contain important ecosystems such as provincially significant Areas of Natural and Scientific Interest (ANSIs), habitats of endangered species that have specific guidelines developed by the Ministry of Natural Resources and Forestry for the CLTIP, or Provincially Significant Wetlands (PSWs). This excludes land already zoned by the municipality for conservation.³³ Properties that have been commercially harvested in the past ten years are also not eligible unless reevaluated to determine if CLTIP features and values have been retained. While not currently included in CLTIP's guidelines, inherent and treaty Rights of Indigenous Peoples must be considered for all lands. As of 2020, 289,000 hectares on 24,900 properties have been conserved.³⁴ This program has less of a financial burden than MFTIP and can be applied to much smaller areas. However, there is a higher expectation of habitat quality which may exclude a lot of lands.

Unlike a conservation easement, this program does not protect the land in perpetuity and the Ministry may revise the features and boundaries that are eligible. For example, changes to the Ontario Wetland Evaluation System for PSWs in 2022 included removing wetland complexes (two or more wetlands separated by non-wetland area but functionally linked by wildlife usage, surface water, or groundwater connections) from the evaluation.³⁵ As these changes are recent, it is unclear what impact they will have on this program. However, as an example, without complexing, ninety-four percent (94%) of wetlands within the Toronto and Region Conservation Authority's jurisdiction are below the size threshold of two (2) hectares and no longer eligible for evaluation and designation as a PSW.

Again, public access is not required on CLTIP lands and trail development or upgrading may only be permitted with approval from the Ministry. Acceptable activities on the land include trail maintenance in addition to invasive species management, native species planting, tree removal for health or safety purposes where the wood is not sold, and planned prescribed burns.³⁶ It is important that Indigenous fire practitioners are involved with planning and conducting prescribed burns, as it is inherently an Indigenous-based practice and Science. Every organization involved in lands management should be aware of and striving towards Indigenous reclamation of burning practices on Turtle Island and Australia. Cultural burns are a traditional practice that is critical to Indigenous Peoples and the revival of ceremony.

“Through Ontario's Conservation Land Tax Incentive Program, 289,000 hectares on 24,900 properties have been conserved, as of 2020.”

33. See: <https://www.sps.mnr.gov.on.ca/>. 34. See: <https://sobr.ca/indicator/participation-provincial-tax-incentive-programs/>.

35. See: Ontario Ministry of Natural Resources' 2011 document, *Significant Wetlands and the Ontario Wetland Evaluation System*.

36. See: <https://www.ontario.ca/page/conservation-land-tax-incentive-program>.

Legislation

Some countries have legislation defining the right to access certain areas. These laws are commonly referred to as the “right to roam”, as they started with the idea of access to nature in the countryside as a common right. In Norway, Sweden, Finland, and Scotland, this is a universal right to access all rural areas. Other countries such as England, Germany, Denmark, and Switzerland, define more limited lands, such as forests, moors, or mountains. Additionally, England has Public Rights of Way which also cut through private properties but require confinement to formal trails.³⁷

With the right to access comes the responsibility to behave in a way that does not disrupt agriculture or damage ecosystems. For example, in Sweden there are restrictions on cropland access during growing seasons, the expectation that users follow “leave no trace” principles, requirements for leashed dogs, and limited campfires.³⁸ In Canada, a “right to roam” system could mirror recreational access already allowed on unceded (Crown) lands and legitimize and protect informal trail networks, as well as further reconciliation with Indigenous Nations and Peoples. This could make a significant difference in access to nature, but would not work everywhere. There are already conflicts in Canada around people walking on agricultural lands, so in areas where unlimited access is a concern due to its impacts on ecosystems, farms, or liability for landowners, a model more like England’s Public Rights of Way system could be employed. Some Canadian trail networks already include private lands. The benefit of new legislation in urban and near-urban areas would be to remove liability for the landowner since it is assumed that people are using the trails at their own risk.



Photo source: Toronto and Region Conservation Authority (TRCA).

37. See: *Campion & Stephenson (2010)*. 38. See: <https://www.naturvardsverket.se/en/topics/the-right-of-public-access/>.



Case Study

Right to Roam and Public Rights of Way, England

In England, public access to nature on private lands is provided through Public Rights of Way and the “right to roam”. The “right to roam” was created by the Countryside and Rights of Way Act 2000 and covers walking, running, wildlife watching, and climbing on “open access land” including mountains, moors, heaths, and downs that are privately or publicly owned. Additionally, if individual landowners allow it, or there are local traditions of access, horseback riding, cycling, camping, and more may be acceptable. Dogs must be leashed between March and August to protect ground-nesting birds, and around livestock always. These rights do not apply to courtyards around houses and buildings or on croplands.³⁹ Because there is a baseline assumption of access, landowners of “open access land” are not responsible for explicitly excluding or allowing recreation and recreationists are not considered welcomed visitors. This results in landowners owing a lesser duty of care to recreationists which protects landowners from liability unless they set out to create risk.⁴⁰

Notable land types without “open access land” status include rivers, woods, and green belt lands. Expanding the definition to include these areas was recently considered, but the national government decided not to publish their research findings in 2022.⁴¹ There is concern that expanding access would have negative impacts on biodiversity, as the “right to roam” does not require recreationists stay on formal trails. However, illegal off-trail use may already be happening and having a legal right could increase educational programming on how to behave responsibly.

An alternative to the full “right to roam” are the Public Rights of Way, which are already present in high densities on green belt lands and could be expanded in other areas without “open access” status. These paths allow for public access through private lands on official routes, including walking, running, and in some cases horseback riding, cycling, and motorists. The trails on green belt lands are especially important for access to nature and a large part of Natural England’s Walking the Way to Health Initiative, which creates walking clubs and shares information on the mental and physical health benefits of movement, primarily in greenspaces.⁴²

Indigenous Lens: In Canada, expanding access without mitigating impacts on biodiversity conflicts with the preservation of Traditional Territories and sacred sites, as well as the ability to protect these lands on the part of Indigenous Peoples for the next Seven Generations, is not appropriate. Prioritizing ecosystem protection with Indigenous Nations and Communities affiliated with the lands in question would be required. This could potentially include a constitutional amendment and a First Ministers Conference on the Environment outlining the level of treaty and traditional land protection, all of which would feed into the ecological, biological, scientific work necessary to successfully manage a multi-approach plan. Further, educational programming could be developed to inform about Indigenous Rights, history, stewardship, and the alignment of priorities and goals between Western and Indigenous conservations.

This case was highlighted to show multiple approaches to rural public access to nature legislation, with options for on- and off-trail use.

39. See: <https://www.gov.uk/right-of-way-open-access-land/use-your-right-to-roam>.

40. See: <https://www.gov.uk/guidance/open-access-land-management-rights-and-responsibilities#your-liability-to-the-public>. 41. See: Horton (2022).

42. See: Campaign to Protect Rural England & Natural England’s 2010 report, *Green Belts: a greener future*.

Challenges for Landowners

For most voluntary programs and incentives, landowners are required to find the programs and apply, which includes understanding and providing information on the quality and contents of their land. This can be time prohibitive or challenging for uninformed landowners. Lack of awareness of the programs available is especially common following the COVID-19 pandemic as many urban residents moved to rural areas and became newly eligible for land stewardship programs. Applying for programs may also include financial costs such as developing a Managed Forest Plan or hiring a lawyer to support the conservation easement signing process.

Landowners may be concerned about the disadvantages of land stewardship programs, including losing development or other rights (i.e., woodlots, crop production) on their land and the subsequent reduction in value, new responsibilities to restore or maintain biodiversity, and the time and money required to mitigate the impacts of public access. Programs may have funds or volunteers to assist with restoration and maintenance, but the landowners are ultimately responsible. Additionally, interested landowners may not meet eligibility criteria for certain incentive programs if their land is degraded or does not currently contain important or sensitive ecosystems. Within ecological corridors and large park networks, the opportunity to restore these lands, manage invasive species, and increase biodiversity should be considered.

Agricultural, institutional/corporate, and Indigenous landowners may also require added incentives to increase their participation. For example, farmers' priority may be to protect farmland in urban areas with conservation as a secondary, but important objective. First Nation lands are already tax exempt.

Landowners motivated to protect private land may also experience challenges finding the right program for their property if:

- The habitat does not meet certain standards for government programs, such as criteria for ecological sensitivity;
- The property is not located along an ecological corridor, trail network, or park network;
- There are no land trusts or recreation associations in the area with the resources to work with new landowners;
- In the case of acquiring land or signing an agreement with public access as the primary goal, the property is inaccessible due to harsh terrain.

Many landowners are concerned that allowing public access invites the risk of liability lawsuits related to recreational accidents on their properties. This can be mitigated by working with an organization who can provide insurance coverage, such as a recreation association, but again the landowners are ultimately responsible. This issue is covered in more detail in the next section.



Liability Issues for Private Lands in Park Networks

A major concern for landowners considering public access is liability in case of injury. The responsibility to maintain safe trails and clear signage on private land varies across Canada, but six provinces—Alberta, British Columbia, Manitoba, Ontario, Nova Scotia, and Prince Edward Island—have developed Occupiers' Liability Acts (OLAs) to define the legal relationship between landowners (occupiers) and users.⁴³ These Acts have similar language, stating that the users have willingly assumed all risks and the occupiers only owe a limited duty of care if:

THE USER	THE OCCUPIER
<p>Enters an occupier's land for the purpose of recreation, including on:</p> <ul style="list-style-type: none"> • Marked trails, • In wilderness areas, or • On rural land used for forestry or agriculture. 	<ul style="list-style-type: none"> • Has clearly marked recreational trails, • Is not receiving payment beyond that from a government program or non-profit recreation association, and • Is not providing living accommodation on the property to the user.

This limited duty is to not deliberately cause harm or act with reckless disregard for the user's safety. If trails are not clearly identified, or if the landowners are not explicitly denying access (e.g., through fencing or signage), the OLAs assume general access is allowed and the occupier possesses the full duty of care.

Despite the similarity between the OLAs, there are differences in how they have been enforced. For example, in Ontario and British Columbia, the same definition of reckless disregard has been used to side with the user and occupier, respectively. The key difference is that in Ontario, if a landowner has an established inspection or maintenance regime but fails to apply it consistently, they are considered liable for damages or injuries.⁴⁴ This has primarily come up in cases against municipalities but could impact private landowners as well. Therefore, private landowners in Ontario may wish to take extra steps to reduce their chance of a lawsuit, such as ensuring there is nothing needlessly dangerous on the land. In the case of natural or unavoidable hazards, proper signage, light reflectors, or cordoning off dangerous areas will reduce injuries.⁴⁵ In contrast, the Albertan OLA includes additional language to state that recreational users are considered trespassers unless the occupier receives payment beyond that from the government or a non-profit recreation association. This wording provides the greatest protection for landowners and may be something for other provinces to consider adding when looking to increase access to private land. Ensuring that participation in programs does not increase the potential legal risk to landowners through this specific wording will be necessary to incentivize landowners. OLAs and other provincial acts must be available in the local Indigenous languages of Peoples connected to the land through treaty or traditional use.

43. Alberta: *Occupiers' Liability Act*, RSA 2000, c O-4 (2019); British Columbia: *Occupiers' Liability Act*, RSBC 1996, c 337 (2012); Manitoba: *Occupiers' Liability Act*, CCSM 2005, c O8 (2021); Ontario: *Occupiers' Liability Act*, RSO 1990, c O2 (2021); Nova Scotia: *Occupiers' Liability Act*, 1996, c 27 (2019); and Prince Edward Island: *Occupiers' Liability Act*, 1984, c O-2 (2003). 44. See: <http://www.leelau.net/sharonandlee/liability-for-non-commercial-trailwork-in-british-columbia-and-some-parts-of-canada/>. 45. See: <https://mccagueborlack.com/emails/articles/occupiers-liability.html>.



Beyond legislation, private landowners can limit their exposure to risk by providing access to land through an official organization or system (e.g., the Bruce Trail Conservancy or Ontario Federation of Snowmobile Clubs trail network case study). The benefits of working with an organization may include insurance for users and trail workers, and access to those trail workers to provide maintenance and monitor the land for any hazards that should be marked. Smaller land trusts often do not have the funding for general liability insurance or maintenance to avoid land degradation and thus do not encourage public access. Changes to liability legislation could help with the first issue. The second may require revenue generation, such as through trail access permits as is done with the snowmobiling network, or government funding for trail upkeep. For example, organizations are often seasonal, and thus do not have volunteers performing monitoring or maintenance most of the year. This potential lack of year-round protection would be a key concern for Indigenous Peoples. Partnerships with Indigenous Nations and Peoples would make projects eligible for funding programs such as Environment and Climate Change Canada's Indigenous Guardians, which could offset this lack of funding and ensure lands are protected continually.⁴⁶

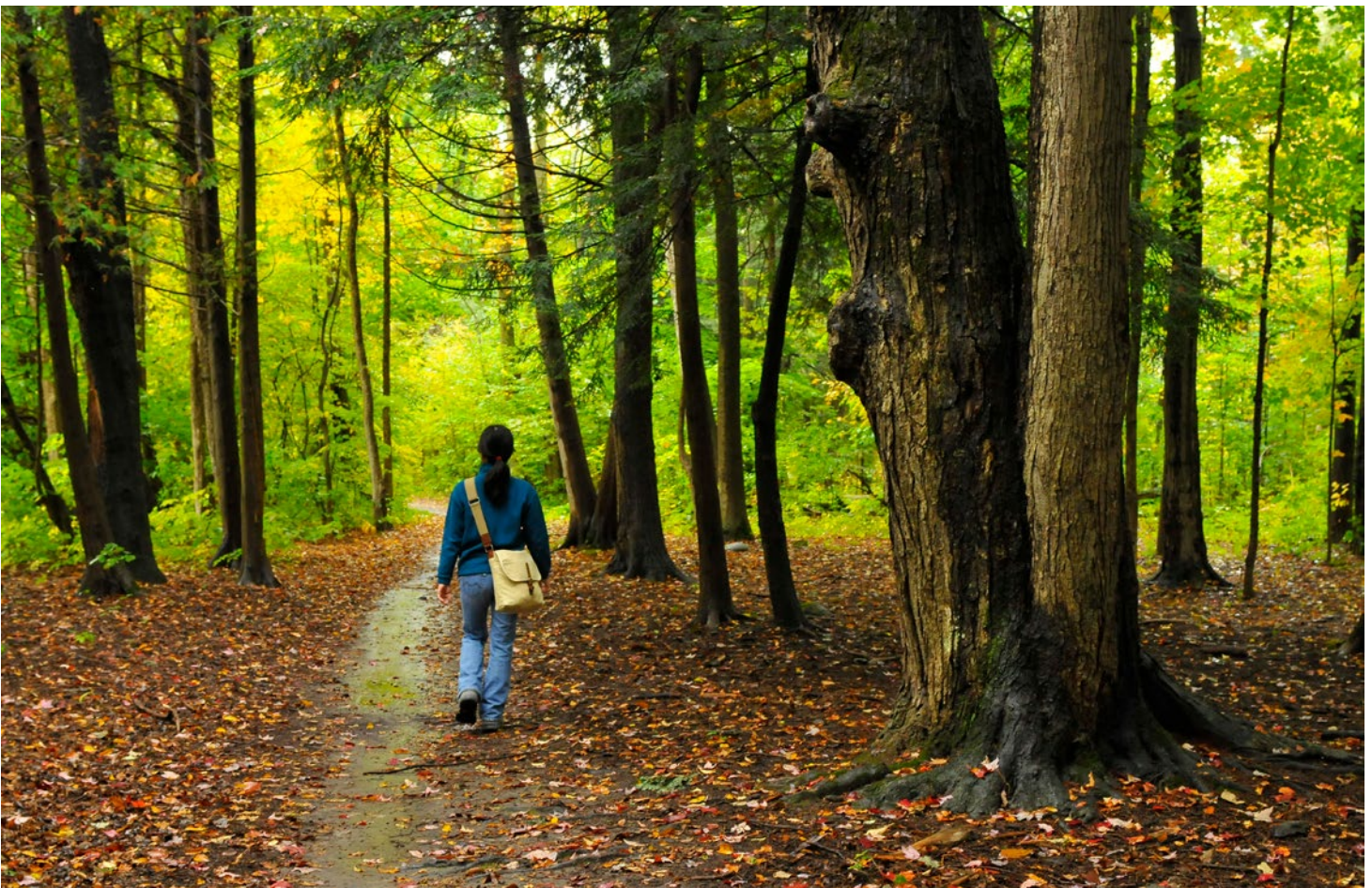


Photo source: Toronto and Region Conservation Authority (TRCA).

46. See: <https://www.canada.ca/en/environment-climate-change/services/environmental-funding/indigenous-guardians.html>.



Protection for Indigenous Cultural and Spiritual Sites

Protection for lands with special cultural and spiritual sites for Indigenous Peoples is largely overlooked in current programs for private land stewardship. The Canadian Land Trust Alliance's Standards and Practices states that the 2019 revision simply followed updates to the United States' standards and did not appropriately address Indigenous Nation and Community engagement. The only recommendations they provide are to secure proper technical expertise on Indigenous matters, include identifying significant Indigenous values of a property and the threats to those features in the land management plan, and have individual land trusts actively reach out and engage local Indigenous Nations.⁴⁷ Despite the lack of detail, the last recommendation appears to be experiencing uptake, as a national survey in 2021 found a third of land trusts have a relationship with the closest Indigenous Nation or Community. However, as the report on the survey concluded, "there is no ethical basis for private land conservation organizations to operate as though Indigenous governments have no role in relation to private lands".⁴⁸ With forty land trusts in the province of Ontario alone, the number of land trusts which have formed relationships with Indigenous Communities must be increased, for the benefit of the lands and all inhabitants. For example, grassroots land trusts such as The Land Between have established fully integrated Indigenous and Western methodologies and stands as an example of successful relationship building and synergistic mutual benefits.⁴⁹

The Ecological Gifts Program and Ontario tax incentives programs also do not explicitly mention important Indigenous sites or the need for engagement with Indigenous Nations and Communities. However, Crown governments have a duty to consult and accommodate Indigenous Peoples. While "consult" is the term used, the duty is proportionate to the potential negative impact on Indigenous Rights, which warrants greater engagement, with decision-making authority returned to Indigenous Communities as the ultimate goal. There is no similar obligation for third parties such as land trust NGOs, but in any instance where a land trust's work intersects with Crown governments and meets the duty to consult threshold, the Crown still has that duty. In these cases, the Crown may delegate aspects of consulting and accommodating to the land trust to assist where they would be more appropriate, such as through contacting and coordinating with Indigenous Nations and Communities, reporting on engagement, or creating employment and training opportunities. Examples of land trust activities that may trigger the Crown's duty to consult include the use of Crown funding to acquire private land for conservation, creating conservation easements through the Ecological Gifts Program, or applying for government conservation tax incentives.⁴⁸

It is essential that Indigenous Peoples are involved in every level of planning to identify key sites and species and foresee impacts of decisions on Indigenous Rights, lands, waters, and Peoples, today and Seven Generations into the future.⁵⁰ Therefore, Crown governments and land trusts or other NGOs have social and ethical responsibilities beyond what is legally required to engage with Indigenous Peoples, especially in ways that recognize the history of Indigenous displacement in conservation.⁴⁸ A wise practice is to engage and work with Indigenous Peoples in regards to existing and future land acquisition to ensure understanding, collaboration, and sharing of resources. In the absence of legal requirements for Indigenous engagement, the IUCN's Guidelines for Privately Protected Areas can also act as a guiding document, as it explains that it is the landowner or prospective landowners' responsibility to understand traditional access Rights and to ensure creating private protected areas does not undermine other Rights to lands and resources.⁵¹

47. See: Canadian Land Trust Alliance's 2019 report, *Canadian Land Trust Standards and Practices*. 48. See: Innes, Attridge & Lawson's 2021 report, *Respect and Responsibility: Integrating Indigenous Rights and Private Land Conservation in Canada*. 49. See: <https://www.thelandbetween.ca/organization/how-we-operate/>. 50. Note, Indigenous engagement and co-governance are further explored in another report in this series: *Mosaic Governance in Large Parks; and considerations for avoiding negative impacts for Indigenous Communities in the development of large parks* is further explored in: *Creating Large Park Networks to Meet Urban Challenges*. 51. See: Mitchell et al. IUCN 2018 report, *Guidelines for privately protected areas. Best Practice Protected Area Guidelines Series No. 29*.



Pre-engagement with Indigenous Nations, or hiring Indigenous liaisons to facilitate engagement, is recommended. Further, Crown governments and land trusts must integrate relevant Rights and obligations from the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in their decision-making. Relevant articles from UNDRIP include:

- Article 11.1: Indigenous Peoples have the right to practice and revitalize their cultural traditions and customs. This includes the **right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites...**
- Article 12.1: Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs, and ceremonies; **the right to maintain, protect, and have access in privacy to their religious and cultural sites...**
- Article 26.2: Indigenous Peoples have the **right to own, use, develop and control the lands, territories, and resources that they possess by reason of traditional ownership or other traditional occupation or use...**
- Article 29.1: Indigenous Peoples have the **right to the conservation and protection of the environment** and the productive capacity of their lands or territories and resources...
- Article 32.1: Indigenous Peoples have the **right to determine and develop priorities and strategies for the development or use of their lands** or territories and other resources.⁵²

"It is essential that Indigenous Peoples are involved in every level of planning to identify key sites and species and foresee impacts of decisions on Indigenous Rights, lands, waters, and Peoples, today and Seven Generations into the future. Therefore, Crown governments and land trusts or other NGOs have social and ethical responsibilities beyond what is legally required to engage with Indigenous Peoples, especially in ways that recognize the history of Indigenous displacement in conservation."

52. See: United Nations' 2007 Declaration on the Rights of Indigenous Peoples. Emphasis added and articles edited to capitalize "Indigenous Peoples".



A new way land trusts are protecting important sites with Indigenous Peoples is through the “land back” movement—a decentralized campaign in the United States and Canada of Indigenous Peoples reasserting their status as sovereign nations, seeking to formally take authority, politically and legally, over all unceded lands on Turtle Island, for conservation and restoration purposes. For instance, the Land Conservancy of British Columbia purchased SISŹENEM (Halibut Island), an ecologically and culturally significant small island off the east coast of Vancouver Island, and then transferred the island to the W̱SÁNEĆ (Saanich) Leadership Council.⁴⁸ Another important part of the solution for the gap in Indigenous participation in protected private lands is the creation of Indigenous land trusts, which must place capacity building as the primary goal, to ensure sustainability and long-term success. This way, Indigenous Communities do not require the voluntary co-operation of non-Indigenous NGOs. There are a few such land trusts being developed, including the Anishinaabek Land Trust in Ontario that was profiled in the report entitled *Improving Access to Large Parks in Ontario’s Golden Horseshoe*.⁵³



“A new way land trusts are protecting important sites with Indigenous Peoples is through the “land back” movement.”

Photo source: Toronto and Region Conservation Authority (TRCA).

53. See: Green Infrastructure Ontario Coalition’s 2022 report, *Improving Access to Large Parks in Ontario’s Golden Horseshoe: Policy, Planning, and Funding Strategies*.



Case Study

Walpole Island Land Trust, Ontario

Walpole Island Land Trust is the first First Nations land trust incorporated and registered as a charity in Canada. The land trust was established in 2008 with the goal to conserve and maintain the unique natural resources on over 1,200 hectares of Walpole Island First Nation/Bkejwanong Territory.⁵⁴ This territory is found along Lake St. Clair between the Great Lakes of Lake Huron and Lake Erie and includes one of the most pristine tallgrass prairies left in Canada, Carolinian forests, rare oak savannas, and over sixty of Canada's rare and endangered species.

Walpole Island Land Trust integrates formal land conservation with traditional cultural ties to the land. This involves restoration and research alongside Elders mentoring youth around the ethical harvesting of food and medicine, survival techniques, and history.⁵⁵ The land trust was also awarded an Ontario Trillium Foundation's Resilient Communities Fund grant in 2021 to train Walpole Island First Nation students to conduct ecological studies during the COVID-19 pandemic.⁵⁶

While the land trust is effective in conserving the habitat and reconnecting Community members with nature, the founder of the land trust, Clint Jacobs, notes it is based on Western governance systems and written laws, rather than Indigenous Ways of Knowing and ceremony. Therefore, a future iteration of these practices may be developed using traditional governance systems based on clan structure.⁵⁷

This case study was selected to highlight the unique approaches that can be taken by Indigenous land trusts and thus the successful conservation of biodiversity and culture for the Walpole Island First Nation/Bkejwanong Community.

"Integrating private lands in large park networks or otherwise opening access to the public is useful to expand the available greenspace needed to conserve biodiversity, connect ecological corridors and trail networks between other protected areas, maintain human health and wellbeing, and ensure Indigenous Rights and Responsibilities are shared and implemented as a path to reconciliation."

54. See: https://caroliniancanada.ca/legacy/Forum2008/Presentations/Fri_8-01a_Notes_How_Far_Have_We_Come_Jacobs.pdf. 55. See: Jacobs (2010).

56. See: Sacheli (2021). 57. See: Ontario Nature, Plenty Canada, Walpole Island Land Trust & the Indigenous Environmental Studies and Sciences Program and Trent University's 2018 report, *Transforming Conservation: Indigenous Protected and Conserved Areas in Ontario*.

Conclusions and Recommendations



Photo source: Shutterstock.

Integrating private lands in large park networks and opening access to the public is essential to expand the available greenspace needed to preserve biodiversity in Canada's urban and near-urban, connect ecological corridors and trail networks, and maintain adequate access to nature for growing populations. Private lands can expand or enhance existing large parks and maintain and restore biodiversity through developed and fragmented landscapes. Enhancements to existing programs and incentives are needed to increase participation. New tools hold promises for greater outcomes such as liability legislation to facilitate public access, the use of OECMs to increase landowners' ability to protect private lands and local economies, and restoration commitments for biodiversity that could restore degraded urban landscapes and manage invasive species. Private lands involved in conservation programs can ensure Indigenous Rights and Responsibilities are respected and integrated as a path to reconciliation.

This section identifies recommendations to increase the protection of private lands for biodiversity, the use of private lands for public benefit, and requirements to integrate Indigenous engagement in private land stewardship. With unprecedented demands for greenspace and threats to biodiversity in urban areas, it is important for land trusts and recreation associations to prioritize conservation of private lands and large park networks. This requires collaboration with many others to map existing trail networks and ecological corridors to understand the current state and future needs of the protection, management, and access of lands in the network.

Overview of Current Programs for Land Stewardship and Public Access

Current stewardship and public access options for landowners include selling or donating their land, conservation easements to restrict development in perpetuity, land use agreements for recreational access, or tax incentives for sustainable land management and conservation. Table 1 compares the advantages of each approach. Further details and case studies can be found in the report above.



Table 1 Comparison of land protection, incentives, and public access for private land stewardship programs


	Permanent Land Protection	Economic Benefit	Reduced Liability	Operational Support	Public Access
Donation to a Land Trust	Yes	No	Yes, ownership has transferred to land trust	N/A	May be included as a condition of the donation
Sale to a Land Trust	Yes	Yes, sale price	Yes, ownership has transferred to land trust	N/A	May be included as a condition of the sale
Conservation Easement (with Land Trust or Government Ecological Gifts Program)	Yes	Yes, tax incentives, sometimes sale price of the development rights	No	May be included as a condition of the agreement	May be included as a condition of the agreement
Land Use Agreement with Recreation Association	No	No	Yes, often offer liability insurance and there is a limited duty of care on marked trails	Often include volunteer trail workers for maintenance	Yes
Managed Forest Tax Incentive Program*	No	Yes, tax incentives	No	No	No
Conservation Lands Tax Incentive Program*	No	Yes, tax incentives	No	No	No

*Only available in Ontario, similar programs may be available in other provinces and territories.



Increasing Private Land Stewardship

- Government and other funding agencies should prioritize programs such as the Land Trusts Conservation Fund to support land donations and conservation easements to protect land and provide access to nature in areas with high private ownership. These programs must also formally recognize Indigenous Rights and Responsibilities, creating opportunities for Indigenous Peoples to connect to the land.
 - Further, engaging and integrating Indigenous cultural beliefs into the text of programs would be a step towards reconciliation, enriching the materials, and building trust with Communities.
- Comprehensive ecological corridor maps should be used to target private land for inclusion in large park networks.
 - Data from existing maps and research should be shared and combined to identify gaps in knowledge and protection, such as that of Indigenous Science or participation in these activities. Coordinated approaches to corridor mapping should involve broad community partners, including Indigenous Communities and organizations and establish targets that support Canada's biodiversity commitments to halt and reverse loss, establish connectivity, and restore degraded lands.
- Targeted outreach with landowners of properties that are of prime importance for access or ecological connectivity in a large park network may reduce the educational and resource barriers for landowners to find and apply for programs and could also be used to educate about Indigenous histories and create access for hunting, harvesting, and fishing Rights and Responsibilities.
- Government and land trust stewardship programs based on tax incentives must provide other benefits for private landowners such as First Nations who are already tax exempt.
- Government and other funding agencies should enhance incentives for private landowners to participate in conservation.
 - Support land trusts to explore opportunities to streamline the process for conservation easements and reduce costs for landowners and shorten the time it takes to complete agreements.
 - Consider an agricultural-centric program modeled after the Ecological Gifts Program to protect farmland essential for connectivity and public access that does not meet national and regional criteria for ecological sensitivity.
 - Provide financial support to reduce the barriers for landowners developing required plans for tax incentive programs.
 - For example, Ducks Unlimited has a program to provide a forty percent (40%) reimbursement (up to \$600) towards an approved Managed Forest Plan for landowners working towards Ontario's Managed Forest Tax Incentive Program if the land includes a wetland over two (>2) hectares that meets their criteria for waterfowl habitat. A similar program could be developed for other valuable forest features or for landowners with financial restrictions.

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- Governments and other funding agencies should consider new programs to support landowners in enhancing their properties to make them eligible for land stewardship programs with habitat quality criteria such as the federal Ecological Gifts Program or Ontario's Conservation Land Tax Incentive Program. Programs would support Canada's recent commitment to restore thirty per cent (30%) of degraded lands.

Increasing Public Access

- All lands donated or sold for stewardship or placed under a conservation easement should be automatically considered for public access, given landowner permission, alignment with Indigenous Rights and Responsibilities, and the capacity to manage recreation for conservation.
- Government programs for private land stewardship should include public access as an objective, where ecosystems can tolerate the disturbance, in alignment with Indigenous Rights and Responsibilities.
- Land trusts should expand their purpose to include public access to nature, especially in southern Canada where there is less public land.
- All provinces and territories should create or update their Occupier's Liability Act to mirror Alberta's definition of recreational users as trespassers unless the occupier receives payment beyond that from the government or a non-profit recreational association.⁵⁸ This wording provides the greatest protection for landowners which incentivizes increased access to private land.
 - This limited duty of care applies to rural lands that are forested, vacant, or used for agriculture, golf courses outside of regular hours, utility rights-of-way excluding structures located on them, or reasonably marked recreational trails.
 - Such new or updated legislation may reduce the need for expensive liability insurance on recreational trail networks.
- Governments should also consider the feasibility of England's Public Rights of Way model which removes liability on dedicated trails, as it assumes people are using trails at their own risk.

58. See: *Occupiers' Liability Act*, RSA 2000, c O-4 (2019).



Indigenous Engagement

- Governments and land trusts must develop relationships with Indigenous Nations and Communities affiliated with the lands that are donated or sold for stewardship or placed under a conservation easement to ensure proper engagement.
 - Indigenous Nations and Communities must have a voice in determining spiritual, cultural, historical, and financial land values. For example, a working group could be established with consultation officers of local Indigenous Communities within a Traditional Territory and/or treaty area. This is also an opportunity for Indigenous employment and job creation.
 - It is important to establish contact early in the planning stages to ensure standards, such as what constitutes “tolerable disturbances” to ecosystems when considering public access, to meet the expectations of all parties.
 - The protection of Indigenous cultural and spiritual sites should be the sole responsibility of the impacted Indigenous Peoples. However, this should not stop proprietors from supporting Indigenous cultural practices related to these sites.
 - In addition to protecting known sites of importance, relationships with Indigenous Peoples should include opportunities to create new spaces for ceremony and connecting with nature.
- Land trusts should follow the Canadian Land Trust Alliance’s Standards and Practices; but, in the absence of detailed standards for Indigenous engagement and respect for Indigenous Rights, land trusts must voluntarily adopt and adhere to existing guiding documents, such as the IUCN’s *Guidelines for Privately Protected Areas* and relevant Rights and obligations from the United Nations *Declaration on the Rights of Indigenous Peoples* (UNDRIP) in their decision-making.
 - For example, the IUCN’s guidelines include that it is the landowner or prospective landowners’ responsibility to understand traditional access Rights and to ensure that creating private protected areas does not undermine other Rights to lands and resources. UNDRIP states that Indigenous Peoples have Rights to maintain, protect, and develop historical sites, access cultural sites, own and control Traditional Territories, conserve and protect the environment, and determine and develop priorities for the development of their territories.⁵⁹
- Government or other funding agencies must prioritize existing and create new programs to support Indigenous land trusts and Indigenous engagement in other private land conservation.
 - Current examples include Environment and Climate Change Canada’s Indigenous Guardians funding program and the Conservation through Reconciliation Partnership’s support for Indigenous land trusts.⁶⁰
 - These programs represent an important opportunity for Indigenous employment and reconciliation.
- A clear process needs to be developed to support “land back” initiatives, including education and guidelines for landowners on how to connect with the appropriate Indigenous Nation or Community, how to transfer ownership, and funding for legal advice and representation for Indigenous parties.

59. See: Canadian Land Trust Alliance’s 2019 report, *Canadian Land Trust Standards and Practices*; Mitchell et al. IUCN 2018 report, *Guidelines for privately protected areas*; United Nations’ 2007 Declaration on the Rights of Indigenous Peoples. 60. See: <https://www.canada.ca/en/environment-climate-change/services/environmental-funding/indigenous-guardians.html>; <https://conservation-reconciliation.ca/our-projects>.

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