

Land Protection Agreement Checklist

Thank you for your interest in protecting the natural features and wilderness areas of the land you own.

A Land Protection Agreement offers you the possibility of deciding how your land will be used and developed in the future and of receiving a tax receipt for putting land conservation restrictions in place.

The Land Conservancy of Kingston, Frontenac, Lennox and Addington is open to discussing land protection arrangements with landowners. We have prepared this checklist to give you information about the kinds of conditions you can include in a Land Protection Agreement.

We would be pleased to talk to you about how you would like to preserve the conservation values of the land you own.

The purpose of a Land Protection Agreement

Land Protection Agreements benefit the community because they maintain the natural character of a piece of land and preserve habitat for wildlife species, both plants and animals.

Land Protection Agreements benefit the landowner because they ensure that the land will remain in its natural state in the years to come, regardless of who owns the property. For landowners who value the natural qualities of their property – the woodlots and meadows, the streams and ponds, the open vistas and hilltop views – agreeing to a Land Protection Agreement means leaving a legacy to nature.

The laws that apply to Land Protection Agreements

A Land Protection Agreement is another term for a “conservation easement” or “conservation covenant”. A conservation easement or covenant is a legally binding document registered against the title to a property and governed by the *Conservation Land Act*¹ of Ontario.

¹ www.e-laws.gov.on.ca/Dblaws/Statutes/English/90c28_e.htm.

A Land Protection Agreement is a signed contract between the landowner and the Land Conservancy. It identifies restrictions on the use of the property, sets out what activities are allowed on the property, and describes how breaches of the agreement will be resolved.

The landowner continues to own the property after a Land Protection Agreement is in place and may sell it but the restrictions on the use of the property in the Land Protection Agreement remain. By signing the Agreement, the Land Conservancy takes responsibility for monitoring the property and enforcing the Agreement forever.

How to use this checklist

This checklist describes the types of restrictions and conditions that could be included in a Land Protection Agreement. Not every item will be in every Agreement or will necessarily apply to all parts of a property. It depends on the property and the goals of the landowner and the Land Conservancy.

The purpose of this checklist is to provide the background for a discussion between the landowner and the Land Conservancy about the possible terms of a Land Protection Agreement. We hope that the questions and information in each subject area will help you to think about what you value about your property and how you could protect it.

Here are 8 subject areas for you to think about

1. Conservation values

The purpose of a Land Protection Agreement is to protect and preserve the natural qualities of a property. It is central to the Agreement to identify the conservation values that are the reason for the Agreement.

1.1 What are the natural features that make this property special?

For example, a Land Protection Agreement may be registered on a property that has 500 m of undisturbed shoreline or that has 100 hectares of old growth woodlands or that has meadowlands which provide breeding habitat for an endangered bird species.

1.2 How can the natural features of this property be protected?

In addition to identifying the conservation values that the Land Protection Agreement could protect, it is important to identify how these features can be preserved.

For example, 500 m of undisturbed shoreline must be protected by a buffer area. The value of the shoreline would be significantly diminished if logging takes place to the water's edge.

1.3 What is the current natural condition of the property?

To draft a Land Protection Agreement for a property the condition of the property must be established. Usually, an environmental assessment of the property is completed including an inventory of the plant and animal species found on the property. The Land Conservancy uses this baseline environmental document to determine what restrictions on use may be appropriate to protect the valued natural features of the property and to monitor the property once the Land Protection Agreement is in place.

1.4 Does the property provide habitat for any endangered or threatened species?

2. Existing uses

Land Protection Agreements are not only for pristine, untouched pieces of wilderness; they may also be put in place on a property that is being used by people. However, generally, the Land Protection Agreement will prohibit further development of the property.

For example, an existing road may remain but new roadways cannot be built. A home or cottage can continue to be used but usually other buildings cannot be added. A field may continue to be plowed but new fields cannot be created. The specifics will depend on the size of the property and the conservation values the Land Protection Agreement is preserving.

The Land Protection Agreement may cover the entire property; may apply to most of the property excluding, for instance, the existing dwelling place and an area of land surrounding it; or may apply only to one part of the property, for instance, an area that provides habitat to an endangered species.

Part of the process of drafting a Land Protection Agreement involves drawing a map of the property and indicating where existing structures, if any, are located.

2.1 What is the property used for now?

2.2 What buildings, outbuildings, roads, docks, and other human-made structures are on the property?

3. Restricted activities

The purpose of a Land Protection Agreement is not to put an end to a landowner's enjoyment of the property but to protect its natural features and conservation values. There is no doubt that, over time, human use can have a negative effect on the natural condition of a property and limit the possibilities for regeneration and natural evolution.

For example, picking up downed timber to use as firewood removes forest debris that is part of the forest's natural growth cycle. Hiking, cross-country ski and snowmobile trails may fragment a woodlot. Docks, boating, and swimming activity can disturb fish spawning and feeding grounds. Household appliances and fixtures can put pressure on the water supply.

A Land Protection Agreement will set out the permitted and prohibited activities on a property that have been agreed to by the landowner and the Land Conservancy. It may cover these activities:

3.1 Logging

Can trees be cut? How many? How often? What types? Is there a forest management plan?

3.2 Harvesting

Can plants be removed? Can berries be harvested? Can weeds be taken out of the lake?

3.3 Planting

What planting can take place? Is it ever acceptable to plant exotic (non-native) species on the property?

3.4 Controlling “weeds” and “pests”

Are there any circumstances in which the Land Conservancy would agree to the use of herbicides, pesticides, or other similar products? Is any form of trapping allowed? Can beaver dams be destroyed?

3.5 Hunting

Is hunting by the landowner permitted? Will hunting by others be permitted? May firearms be used?

3.6 Fishing

Is fishing by the landowner permitted? Will fishing by others be permitted?

3.7 Boating, snowmobiling, etc.

What motorized vehicles may be used on the property? By whom? Where? When?

3.8 Bicycling, canoeing, hiking, swimming, camping, etc.

What recreational activities may be done on the property? By whom? Where? When?

4. Water protection

All life depends on access to clean water. A Land Protection Agreement will likely identify ways to protect water sources on a property.

4.1 Where are water sources on the property and how are they being used?

4.2 How might natural events (such as beaver dams, heavy rainfalls, increased nutrient levels) affect water quality?

4.3 How might human activities from outside the property affect water quality?

4.4 What restrictions are required to protect the property's water sources?

5. Land Stewardship

In order to protect and preserve the natural features of a property, it may not be sufficient to simply restrict the human activities that may take place in the future. It may be necessary to implement land stewardship practices that will rehabilitate natural areas or provide additional habitat for a plant or animal species.

For example, tree planting can assist in forest regeneration. Fencing may keep cattle from encroaching on fragile areas. Bird boxes or platforms may encourage a species to nest.

A Land Protection Agreement may include some land stewardship provisions, including:

5.1 Restrictions on or requirements for fencing

Is fencing required to protect an area? Should fencing be removed or prohibited to allow the free movement of wildlife?

5.2 Limitations on composting, dumping, etc.

Is any disposal of soil, rocks, wood, ashes, or vegetable matter allowed on the property? If so, where and under what conditions?

5.3 Alterations to the topography

Are there circumstances in which changing the existing topography would be required for conservation purposes?

5.4 Plans for habitat restoration

What actions are necessary to restore valuable habitat?

The environmental assessment will identify important habitat and if there are any endangered or threatened species on the property. The Land Conservancy may be able to assist with the implementation of a stewardship plan.

6. Monitoring and enforcement

When the Land Conservancy signs a Land Protection Agreement for a property it must monitor the property at least once a year according to the Standards and Practices land conservancies must follow. The purpose of a monitoring site visit is to ensure that the landowner is respecting the terms of the agreement and to assess the condition of the land and the possible need for stewardship activities.

A Land Protection Agreement states the right of the Land Conservancy to access the property for monitoring purposes.

For example, the landowner and the Land Conservancy might agree that the Land Conservancy provide two weeks' written notice of its intention to conduct its yearly monitoring visit.

6.1 What is the monitoring protocol?

6.2 Will the landowner require the approval of the Land Conservancy before taking certain actions on the property?

The Land Conservancy has an obligation to respond if it discovers that the terms of the Agreement have not been respected. The Agreement can identify the process to follow in cases of default or disagreement.

6.3 How will the Land Conservancy notify the landowner if it finds that the terms of the Agreement have not been followed?

6.4 What is the process for resolving disputes?

7. Money

The Land Protection Agreement restricts a landowner's property rights and therefore has value. An appraisal will establish the fair market value of the property without the Land Protection Agreement in place and its value when the Agreement is registered against title. The difference is the cost to the landowner of putting the Land Protection Agreement in place.

7.1 What is the value of the conservation rights covered by the Land Protection Agreement?

For example, a landowner of an 100 hectare property could subdivide it into four 25 hectare lots. An appraisal values the 100 hectare property at \$120,000 and its value when subdivided into four lots at \$75,000 per lot (\$300,000). By agreeing to a Land Protection Agreement that prohibits the subdivision and development of the property, the landowner will not be able to sell the property for \$300,000. Instead, its value is limited to the fair market value of the one 100 hectare lot. The value of the Land Protection Agreement is therefore \$180,000.

The Land Conservancy can issue a charitable receipt for the fair market value of restrictions placed on the property through the Land Protection Agreement. When this donation qualifies as an EcoGift, the landowner may benefit from additional tax advantages. In some cases, the Land Conservancy may offer to buy the conservation rights to the property.

7.2 Does the Land Conservancy have sufficient funds in reserve to cover the long-term costs of taking on the Land Protection Agreement?

It is important to appreciate that the Land Conservancy takes on a significant financial burden when it signs a Land Protection Agreement. Although the Land Conservancy is not the owner of the property and the landowner will continue to pay property taxes and all other costs related to ownership such as insurance, the Land Conservancy must monitor the property at least once a year and may be responsible for the implementation of parts of a stewardship plan. As well, it must set aside funds in case enforcement actions become necessary in the years to come.

7.3 How does the Agreement cover the costs to the Land Conservancy relating to a change of ownership in the property?

Land Protection Agreements are permanent and the goodwill and cooperation of the current landowner cannot be assumed after the property changes hands. It is essential to ensure that a new landowner understands the purpose of the Land Protection Agreement and its specific terms. One way to guarantee that a new landowner is fully apprised of the Land Protection Agreement is to require that a small percent of the purchase price be paid to the Land Conservancy. This covers the costs of initial meetings with the new landowner and recognizes the expenses to the Land Conservancy associated with holding a Land Protection Agreement.

8. Other elements in the Agreement

A Land Protection Agreement reflects the conservation values of the property, the desires of the landowner, and the public responsibility of the Land Conservancy. As such, the Agreement may have clauses that are specific to the property. These are not “boilerplate” agreements that are identical in every case.

Some clauses that might be included are:

- 8.1 The requirement on the landowner to post “No Trespassing” and “No Hunting” signs on the property.**
- 8.2 The terms under which a new building may replace an existing one.**
- 8.3 Permission for the Land Conservancy to post a sign on the property and note the existence of the Land Protection Agreement in its publications (pamphlets, web site, etc.)**

8.4 Permission for the Land Conservancy to arrange a tour of the property for members of the public to appreciate its natural features (this is different from monitoring visits).

Clearly, there is a lot to think about when considering a Land Protection Agreement for your property. We would be pleased to answer your questions and to meet with you to talk about possible ways to protect the natural features you value on the land you own. Please contact the Chair of our Land Acquisition Committee, Anne Robertson at (613) 389-6742 or nature1@sparrow.phy.queensu.ca.

Land Protection Agreement Checklist

Conservation values

- 1.1 What are the natural features that make this property special?
- 1.2 How can the natural features of this property be protected?
- 1.3 What is the current natural condition of the property?
- 1.4 Does the property provide habitat for any endangered or threatened species?

Existing uses

- 2.1 What is the property used for now?
- 2.2 What buildings, outbuildings, roads, docks, and other human-made structures are on the property?

Restricted activities

- 3.1 Logging
- 3.2 Harvesting
- 3.3 Planting
- 3.4 Controlling “weeds” and “pests”
- 3.5 Hunting
- 3.6 Fishing
- 3.7 Boating, snowmobiling, etc.
- 3.8 Bicycling, canoeing, hiking, swimming, camping, etc.

Water protection

- 4.1 Where are water sources on the property and how are they being used?
- 4.2 How might natural events (such as beaver dams, heavy rainfalls, increased nutrient levels) affect water quality?
- 4.3 How might human activities from outside the property affect water quality?
- 4.4 What restrictions are required to protect the property’s water sources?

Land stewardship

- 5.1 Restrictions on or requirements for fencing

5.2 Limitations on composting, dumping, etc.

5.3 Alterations to the topography

5.4 Plans for habitat restoration

Monitoring and enforcement

6.1 What is the monitoring protocol?

6.2 Will the landowner require the approval of the Land Conservancy before taking certain actions on the property?

6.3 How will the Land Conservancy notify the landowner if it finds that the terms of the Agreement have not been followed?

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Money

7.1 What is the value of the conservation rights covered by the Land Protection Agreement?

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Other elements in the Agreement

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