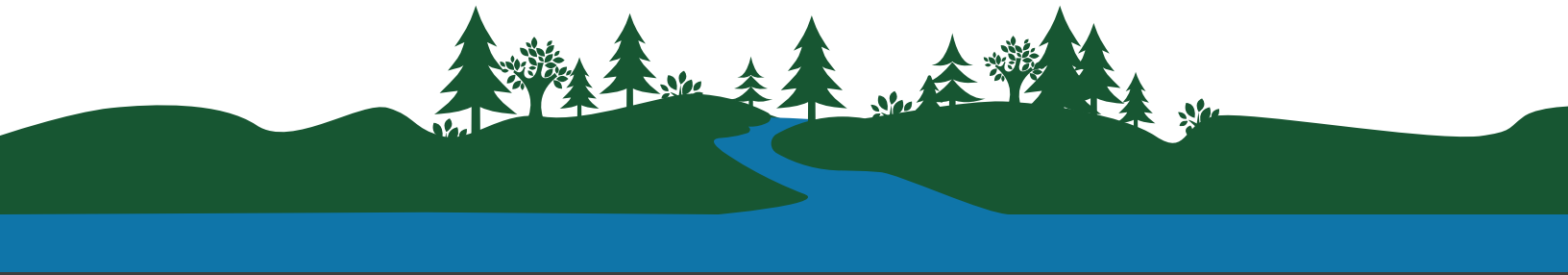


SAFEGUARDING PRIVATE CONSERVATION LANDS IN CANADA



Recommendations to Enhance Conservation Endowments
and Establish Conservation Defence Insurance



Centre for Land Conservation

Centre pour la conservation des terres

This report is published under the CLC's *Accelerating Private Land Conservation* report series, which is devoted to the advancement of land conservation policy, science, and management issues of national interest. The objectives of the series are to increase Canadians' awareness of the value and importance of private land conservation and to promote improved conservation policy and practice that will help achieve better, faster, and durable conservation outcomes in Canada to meet the twin challenges of biodiversity loss and a changing climate. Visit centreforlandconservation.org to view other publications.

About the Centre for Land Conservation

The Centre for Land Conservation (CLC) is a not-for-profit, registered charity established in 2019 that seeks to support the conservation of private lands in Canada. Our vision is for conservation lands in Canada to contribute significantly to biodiversity targets through strong and leading-edge practices. Our approach reflects a commitment to reconciliation with Indigenous peoples and collaboration with conservation partners. As custodian of the Canadian Land Trust Standards and Practices, the CLC works with the land conservation community as an independent voice to enhance public trust and confidence in private land conservation.

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CLC worked with the Dion Strategic Consulting Group in the preparation of this report. Dion Strategic is a Canadian firm that provides actuarial and consulting services for all types of insurance including both commercial and personal, as well as more complex needs such as self-insurance programs and the establishment of captive insurance companies and reciprocal insurance facilities. CLC is especially appreciative of the advice and support of Dion Strategic.

CLC is equally appreciative of the information, advice, and financial support provided by Environment and Climate Change Canada that enabled the completion of this study.

CLC also thanks the Alliance of Canadian Land Trusts and the provincial land trust alliances for their review of a draft of this study and for promoting to their membership the online survey used to gather information for this study.



EXECUTIVE SUMMARY

Stewardship and legal protection of conservation lands in Canada's southern landscapes is critically important to achieving national biodiversity targets and supporting climate change mitigation and adaptation efforts. As most lands within these landscapes are privately owned, non-governmental land conservation organizations have a key role to play if these objectives are to be met. This study focuses on the feasibility of establishing national programs that will provide these organizations with long-term, durable funding and legal protection of their conservation lands and agreements.

The benefits of ensuring a healthy and thriving private land conservation community extend beyond protected area targets and biodiversity conservation to include maintenance of irreplaceable natural infrastructure and ecosystem services that help to mitigate and adapt to the effects of climate change, regulate water quality and quantity and mitigate the effects of extreme weather events that can lead to flooding and drought. Importantly, these lands also provide recreational opportunities and places for outdoor activities, contributing to human health and well-being.

Cultural, educational and health charitable organizations all benefit from funding, including government funding, that financially supports capital asset management and ongoing operations. In addition, some charitable sectors are able to raise additional revenue for their operations. For instance, the arts and culture sector can charge admission fees. Conversely, private land conservation organizations are not fully compensated for the many benefits they provide to society on an ongoing basis. Some organizations provide access to their lands for a fee or ask for voluntary contributions but those are rare instances, often in densely populated areas, and generally cover only a small proportion of management costs. Many members of the public believe access to nature should be free.

Canada now has more than 150 non-governmental organizations working on the ground from coast to coast to protect ecologically important lands and conserve biological diversity. They manage a significant conservation estate and work hard to sustainably manage and protect their lands and agreements. Too often, governments, communities and society hold high expectations for private land conservation organizations without a full appreciation or awareness of the challenges and capacity needed to fulfill these expectations and obligations. To support the ongoing contribution that private land conservation organizations can make toward Canada's biodiversity goals—and accelerate the growth of this contribution—these organizations must be able to both acquire conservation lands or interests in them and have the means to operate sustainably in order to provide long-term, durable stewardship and legal protection of their properties and agreements. Nevertheless, these organizations continue to voice concerns related to the long-term operations, stewardship and legal protection of their conservation properties and agreements.

Reconciliation with Indigenous Peoples

Canadians and their governments are working to advance reconciliation and renew the relationship with Indigenous peoples, based on recognition of rights, respect, cooperation and partnership. The conservation and protection of land, water and biodiversity are important for advancing reconciliation in Canada, and Indigenous leadership and engagement will be central to the success of conservation initiatives.

The conservation and sustainable use of biodiversity are central to the culture, spiritual well-being, traditional activities and way of life of Indigenous peoples. For millennia, Indigenous peoples have cared for and stewarded lands, water and wildlife. Their histories, experiences and traditional ecological knowledge are helping to shape the way land conservation and protection are understood, valued and approached throughout Canada, including lands of conservation importance in southern Canada.

For their part, private land conservation organizations are already engaging with Indigenous communities to establish long-term relationships. Integration of Indigenous perspectives, knowledge and practices will contribute to 'conservation through reconciliation' objectives. Such engagement, collaboration and partnership are an important aspect of the stewardship of private conserved lands.

This Study

In 2022, the Centre for Land Conservation (CLC) published *Forever Protected? The Potential for Sector-wide Approaches to Stewardship and Legal Defence of Private Conservation Lands*, which focused on the stewardship and legal protection of private conservation lands and agreements in Canada. *Safeguarding Private Conservation Lands in Canada* is implementing the recommendations in *Forever Protected?*. To enhance funding for operations and stewardship, it explores one approach, the feasibility of establishing a national conservation endowment match funding initiative that would enhance the capacity of private land conservation organizations to sustain their operations and steward their conservation lands and agreements effectively. It also explores the specifics of how a conservation defence insurance facility could work for legal protection of conservation lands and agreements and the next steps needed to support the sector in moving forward on this issue.

Conclusions and Recommendations: Summary

The findings in *Forever Protected?* were reinforced through this study. Private land conservation organizations have consistently identified the need to enhance their capacity to sustain their operations, steward their conservation lands and agreements, and to be better prepared to manage legal disputes, a risk that they believe is growing.

CLC believes it is time to address these challenges.

National Conservation Endowment Match Funding Initiative

While there is much discussion and interest in growing organizational capacity and various means to achieve this, doing so without confidence in the ability and wherewithal of organizations to maintain that capacity is an important consideration. A national conservation endowment match funding initiative would over time contribute to building and maintaining needed capacity within the sector by growing organizational endowment funds, enabling organizations to have more predictable annual operating budgets and greater confidence in the sustainability of their operations. Respondents to this study showed support for a national endowment match funding initiative as one means to grow endowments.

A national endowment match funding initiative could help build or strengthen partnerships with other sectors to support private land conservation organizations and in so doing benefit these sectors as well. It would offer co-benefits and opportunities to key stakeholders - governments, community or other foundations, private foundations, and individual donors - if they are more deeply engaged. A healthy and vibrant private land conservation sector in southern Canada will:

- help governments meet local to national protection and restoration targets for biodiversity,
- deepen and expand the role of foundations to address long-term interdependent issues related to community, ecosystem health, and climate resilience, if they are the holder of the endowment,
- extend and increase the impact of charitable foundations with mandates to support environmental protection, conservation, climate, and biodiversity action, and create efficiencies for supporting capacity building and increased financial security,
- increase and ensure the impact and security of donations from individuals over the long term, and
- enhance other fundraising activities of these organizations.

Overall, a dedicated multisector effort to build the capacity of private land conservation organizations and ensure their long-term health has the potential to galvanize and accelerate action to achieve faster, better, sustainable conservation.

Recommendations

1/ Establish a national conservation endowment match funding initiative.

2/ Fund the national conservation endowment match funding initiative with initially at least \$15 million annually to achieve investment returns that fully matched would provide 20% of organizations' operating budget after 10 years.

3/ Enable participation and ensure equitable access to funding by all private land conservation organizations.

One option for consideration would be a phased-in approach where, depending upon the circumstances of the organization, the requirement for matched funding would not apply in the initial years of a national conservation endowment initiative.

4/ Ensure investment approaches adhere to recognized high standards of financial management. In this regard, consideration should be given to greater reliance on community foundations as the holder of the endowment.

5/ Support robust marketing and communications strategies that will raise the private land conservation sector's profile.

6/ Consider reinforcing capacity building within the sector by linking eligibility to organizations that meet or are on track to meet high performance measures.

Conservation Defence Insurance

There is a risk, even for the best managed organizations, that a major violation of a conservation property will be discovered or that the organization will become the defendant in litigation seeking, for example, to unravel a conservation agreement. Organizations have no way of knowing when they will need to litigate to protect a conservation agreement or conserved property, how long negotiation and litigation may take or how much it may cost. Most organizations lack funds sufficient to cover the cost of defending a conservation agreement or fee-owned land, which can be substantial particularly if a case goes to litigation. The creation of an insurance facility to address this exposure minimizes these risks and uncertainties by reducing an organization's exposure to potentially high legal costs and fees.

Private land conservation organizations hold more than \$2.6 billion in assets, including a conservation estate either in fee simple ownership or as conservation agreements. Additionally, tens of millions of dollars are raised for conservation annually and millions more in tax receipts are issued for ecological gifts. It is important to ensure that the organizations managing this conservation estate are sufficiently supported to sustainably manage and protect it.

Recommendations

7/ Complete an actuarial analysis and the business case to enable a decision on whether to proceed with the creation of a conservation defence insurance reciprocal facility.

The information needed to enable a decision on proceeding with the establishment of a conservation defence insurance facility depends on the completion of an actuarial analysis and a business case. In particular, information is required on the frequency and severity of legal issues encountered in defending and protecting conservation lands and agreements from harm.

Once an actuarial analysis and business case are available, private land conservation organizations will have the information needed to decide whether to proceed with the regulatory establishment of a conservation defence insurance facility.

8/ Ensure private land conservation organizations have access to risk management information and training.

Due diligence on the part of a private land conservation organization can play a key role in reducing the likelihood of a legal issue arising in the first instance and increase the probability of success should a legal dispute arise.

Even in the absence of conservation defence insurance, the private land conservation sector can put in place additional resource materials and training that would support effective legal risk management. Information provided by the three provincial land trust alliances supports efforts by their members to effectively manage risks.

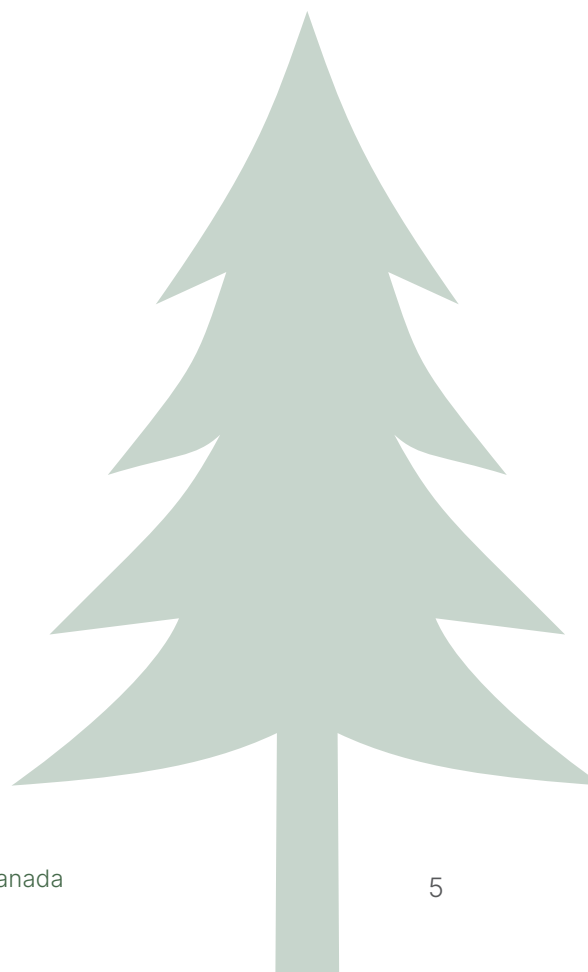
Recommendations 9 and 10 that follow depend upon completion of an actuarial analysis and business case, and a decision by private land conservation organizations to move forward with regulatory establishment of a conservation defence insurance facility.

9/ Establish a strategic project team to secure commitments, and to create and implement a conservation defence insurance facility.

A strategic project team of selected private land conservation organizations will need to be established to guide the process of securing a commitment from private land conservation organizations. It could also manage the regulatory application process, establish the governance structure, and make any further decisions needed about the insurance facility's operation.

10/ Ensure the initial capitalization of an insurance facility is sufficiently large to incentivize organizations to become members.

Although an actuarial analysis and business case for a conservation defence insurance facility in Canada remain outstanding, it is possible to set out considerations with respect to the initial capitalization of such a facility. To satisfy regulatory requirements, the initial capitalization will need to ensure that the insurance facility has sufficient resources to cover potentially significant claims in the early years of the facility. The initial capitalization should also establish an endowment to provide for all or some of the ongoing cost to administer the insurance facility. Ideally, such an endowment would facilitate membership by generating a return on investment that is also able offset a portion of the annual premium of a private land conservation organization.





PART ONE: INTRODUCTION

About This Study

In 2022, the Centre for Land Conservation (CLC) published *Forever Protected? The Potential for Sector-wide Approaches to Stewardship and Legal Defence of Private Conservation Lands*, which focused on the stewardship¹ and legal protection² of private conservation lands and agreements³ in Canada and the capacity of private land conservation organizations to ensure that the conservation benefits of their properties are sustained over the long term.

Safeguarding Private Conservation Lands in Canada is implementing the recommendations in *Forever Protected?* to gain further insights from the sector on endowments and legal protection. *Forever Protected?* noted that there are different ways to enhance funding for stewardship. Safeguarding Private Conservation Lands in Canada explores one approach, the feasibility of establishing a national conservation endowment match funding initiative that would enhance the capacity of private land conservation organizations to sustain their operations and steward their conservation lands and agreements effectively. It aims to lay out the key considerations and design questions should such an initiative ever be developed.

This study also explores the specifics of how a conservation insurance facility⁴ for private land conservation organizations could work. This exploration includes the nature of relevant Canadian legislation, an outline of the considerations in the design of such a facility, and the next steps needed to support the sector in moving forward on this issue.

The conclusions and recommendations of this study are based on research completed over the past year. Research methods included hosting six interactive webinars (100 registrants), two online surveys (38 responses on endowment survey and 31 on legal defence), and direct consultations with individuals from private land conservation organizations and external experts. These activities were conducted in both official languages. The annual data submitted by private conservation organizations to the Canada Revenue Agency for 2018 and 2021 was also analysed.⁵

¹ Stewardship refers to activities undertaken to maintain the biological and ecological values of conservation lands held by an organization or under agreement with a landowner (including the monitoring of lands/agreements)

² Legal protection includes any legal challenges and issues associated with conservation agreements and fee simple lands and/or legal risks to organizations that hold lands (including any enforcement actions).

³ Throughout the report, “conservation agreement” refers to a conservation easement, covenant, or servitude.

⁴ See section About Insurance Facilities.

⁵ The 2021 dataset from the CRA was the most recent available when researching this study. It added to the dataset CLC used in the research for *Forever Protected? The Potential for Sector-wide Approaches to Stewardship and Legal Defence of Private Conservation Lands*.

Unless otherwise credited, tables and figures in the study are based on information gathered through the online surveys and italicized quotations throughout the report are from individuals representing private land conservation organizations who participated in this study.

Some quotations have been edited slightly for clarity. These quotations give voice to different perspectives in the sector and provide context for the conclusions and recommendations. The circumstances differ for each organization and designing an endowment match funding initiative that is inclusive means understanding the respective challenges they face. While many comments were received, those quoted in the study aim to reflect the range of different perspectives.

Biodiversity Conservation in Canada

The acceleration in loss of biodiversity and ecosystem integrity is now well documented both globally⁶ and in Canada. Internationally, following a four-year consultation and negotiation process, the *Kunming-Montreal Global Biodiversity Framework (KMGBF)*⁷ was adopted during the fifteenth meeting of the Conference of the Parties (COP 15) to the Convention on Biological Diversity (CBD). The Framework lays out a set of global goals and targets to halt and reverse biodiversity loss by 2030 and put the world on a path to “living in harmony with nature” by 2050.

In response to the KMGBF, Environment and Climate Change Canada led a collaborative process with provinces, territories, and Indigenous representatives, and with input from partners and stakeholders, to develop Canada’s 2030 National Biodiversity Strategy. The 2030 Strategy establishes a shared vision for halting and reversing biodiversity loss in Canada, reflects Canada’s domestic priorities for biodiversity conservation and sustainable use, and guides how Canada implements the KMGBF domestically. As with the previous Canadian biodiversity goals and targets, achieving the KMGBF objectives and Canada’s 2030 Nature Strategy⁸ will require the *“collective efforts of a diversity of players both public and private whose actions and decisions have an impact on biodiversity. ... Governments need to do their part but cannot act alone.”*⁹

The conservation and sustainable use of biodiversity are central to the culture, spiritual well-being and traditional activities and way of life of Indigenous peoples. For millennia, Indigenous peoples have cared for and stewarded lands, water, and wildlife. Throughout Canada’s history, Indigenous communities have worked to ensure recognition of the importance of biodiversity and healthy ecosystems and today hold direct management responsibility for species and lands under their authority as well as play key roles in efforts to conserve and protect lands, water, and species across broader landscapes. Their histories, experiences, and traditional knowledge are helping to shape the way land conservation and protection are understood, valued, and approached throughout Canada, including lands of conservation importance in southern Canada. This work is reflected in the Indigenous Circle of Experts’ 2018 report entitled: *We Rise Together: Achieving Pathway to Canada Target 1 through the creation of Indigenous Protected and Conserved Areas in the spirit and practice of reconciliation.*¹⁰

6 IPBES (2019), [Global assessment report of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services](#), Brondizio, E. S., Settele, J., Díaz, S., Ngo, H. T. (eds). IPBES secretariat, Bonn, Germany. 1148 pages. ISBN: 978-3-947851-20-1

7 Convention on Biological Diversity (2022), [Kunming-Montreal Global Biodiversity Framework](#)

8 [Canada’s 2030 Nature Strategy: Halting and Reversing Biodiversity Loss in Canada - Canada.ca](#)

9 Environment and Climate Change Canada (2020), [2020 Biodiversity Goals and Targets for Canada](#)

10 The Indigenous Circle of Experts’ Report and Recommendations (2018), [We Rise Together: Achieving Pathway to Canada Target 1 through the creation of Indigenous Protected and Conserved Areas in the spirit and practice of reconciliation](#)

The Importance of Private Land Conservation Organizations

While private lands make up only 11% of Canada, such lands are disproportionately important to the conservation of Canada's biodiversity and are at higher risk of harm or loss. Although species at risk are found throughout the country, higher densities of these species are found in the southern landscapes of Canada where more than 90% of Canadians live, where much of the land is privately held, and where natural areas are under increasing threats. These lands provide habitat for over 70% of Canada's terrestrial species at risk. Success in achieving biodiversity targets, as in restoring habitats and recovering species at risk in these landscapes will depend largely on privately protected and conserved lands. In this regard, private land conservation organizations play a key role.

A private land conservation organization is a non-profit organization that owns property and/or holds conservation agreements to serve its mission to protect and restore special habitat and/or ecosystems in perpetuity. The organization either exists for this sole purpose or manages a portfolio of activities of which this is one. It typically engages community members in many aspects of its operations.

To support the ongoing contribution that private land conservation organizations can make toward Canada's biodiversity goals—and accelerate the growth of this contribution—these organizations must be able to both acquire conservation lands or interests in them and have the means to operate sustainably in order to provide long-term, durable stewardship and legal protection of their properties and agreements. The benefits of doing so in Canada's southern, most developed, and densely populated ecosystems extend beyond protected area targets, species at risk recovery, and biodiversity conservation to include the maintenance of irreplaceable natural infrastructure and ecosystem services that help to mitigate and adapt to the effects of climate change. By conserving wetlands, rivers, and riparian areas, for example, these lands help regulate water quality and quantity and mitigate the effects of extreme weather events including flooding and drought. Importantly, protected lands provide recreational opportunities and places for outdoor activities, contributing to human health and well-being, a particularly important benefit during the recent global pandemic.

In the last half century, particularly the past 25 years, governments have increased their reliance on private land conservation organizations to lead efforts to conserve and protect private lands through the creation of enabling legislation, policies, and programs. Canada now has more than 150 land conservation and other non-governmental organizations working on the ground from coast to coast to coast to protect ecologically important lands and conserve biological diversity. To accelerate Canada's trajectory towards achieving its biodiversity conservation goals, including the ambitious 30×30 protection goal¹¹, governments continue to support and enhance policies and programs. This support is provided through multiple channels, including, but not limited to:

- provincial legislation that enables conservation easements, covenants, and servitudes,
- policy and incentive tools such as Canada's Ecological Gifts Program, and
- federal and provincial funding streams.

Canada's commitments to the protection and restoration goals of the KMGBF elevate the importance of private land conservation organizations. These commitments put significant expectations on these organizations to maintain conservation lands and secure additional habitat within landscapes that are heavily developed and at risk of further degradation or loss. Private land conservation organizations make a promise to protect and steward their lands and conservation agreements in perpetuity. This promise is made to donors of property and funds, to the grantors of conservation agreements, to governments that provide funds and other support, and to the wider community. However, too often, governments, communities, and society hold high expectations for private land conservation organizations without a full appreciation or awareness of the challenges and capacity needed to fulfill these expectations and obligations.

¹¹ 30x30 references Canada's commitment to protecting 30% of its lands and waters by 2030

The Unique Challenge Faced by the Private Land Conservation Sector

While the private land conservation sector shares many needs and challenges with other charitable sectors, it has characteristics that make it unique. The ownership of land or rights in land creates ongoing obligations for these organizations if the natural capital assets of their conservation properties are to be protected now and for future generations. They are, by definition, long-term enterprises with significant capital assets that require continual operations if the benefits of these assets are to be sustained. This requires secure and predictable financial capacity to operate over the long-term and manage challenges such as the legal defence of conservation properties.

Many charities operate their programs on a year-to-year basis, raising the budget needed annually. While there are other charitable sectors that have large capital assets requiring long-term stewardship and maintenance, what differentiates private land conservation organizations is the lack of accessible tools to generate sufficient revenue more readily, particularly unrestricted revenue, for ongoing stewardship of their properties and agreements. Many funders of conservation do not prioritize investments in the stewardship and ongoing operations of these organizations. They prefer to invest, for example, in the establishment of new protection measures which, while commendable, further exacerbates the challenge.

Cultural, educational, and health not-for-profit charitable organizations all benefit from funding, including government funding, that financially supports capital asset management and ongoing operations. In addition, some charitable sectors are able to raise additional revenue for their operations. For instance, the arts and culture sector can charge admission fees. Conversely, private land conservation organizations are not fully compensated for the many benefits they provide to society on an ongoing basis. Some organizations provide access to their lands for a fee or ask for voluntary contributions but those are rare instances, often in densely populated areas, and generally cover only a small proportion of management costs. Many members of the public believe access to nature should be free.





PART TWO: UNDERSTANDING CAPACITY AND INVESTMENT BY THE PRIVATE LAND CONSERVATION SECTOR

A Review of Capacity in the Sector

Data sourced from the Canada Revenue Agency (CRA) for 2021 shows the sector included 157 charitable private land conservation organizations. In total, the sector held over \$2.6 billion in assets, generated over \$502 million in revenue, incurred expenditures of \$321 million (not including gifts to qualified donees) and issued over \$116 million in tax receipts. It employed 1,443 full-time and 1,046 part-time or seasonal employees.

There is considerable variability within the sector from large national organizations to those that operate at the community level. In 2021, 27% reported less than \$100,000 in total annual revenue, 27% between \$100,000-\$500,000, 11% between \$500,000 to \$1 million, 22% between \$1-\$5 million and 8% over \$5 million.

The CRA data suggests that the sector continues to grow. In 2021, 13 more organizations reported to CRA than in 2018¹², the total value of assets held grew by 13%, annual revenue by 27% and tax receipts issued by 35%. Full and part-time/seasonal employees increased by 9% and 24% respectively.

Many organizations are endeavouring to establish and grow special funds to provide a measure of financial predictability. The Alliance of Canadian Land Trusts (ACLT) currently reports that 51% of the 148 organizations they represent have secured stewardship endowment funds.¹³

The total of long-term investments reported by private land conservation organizations to the CRA¹⁴ for 2021 was over \$502 million¹⁵, or 19.3% of \$2.6 billion reported total assets. The Nature Conservancy Canada (NCC) and Ducks Unlimited Canada (DUC) combined held over \$358 million, accounting for over 71% of this total in long-term investments and representing 13.8% of reported total assets. When NCC and DUC are excluded, the remaining organizations hold \$144 million in long-term investments representing 5.5% of reported total assets.

It should be noted, however, that there may be variability in how organizations report data to the CRA. This variability creates a challenge in understanding the total amount of long-term investments held by private land conservation organizations. Out of the 157 submissions, 71 organizations, or 45%, identified long-term investments in their CRA filing while 86 organizations did not. Of the organizations that did not report specific amounts under long-term investments, many nonetheless reported significant assets. It is possible that any long-term investments they may hold are included in the total assets on their charitable return and not identified separately as a long-term investment. Thus, specific data on long-term investments is unclear for 55% of the sector (Table 1).

¹² 2018 data was used for analytic purposes in [Forever Protected?](#)

¹³ <https://aclt-acoc.ca/>

¹⁴ In reporting to the CRA, charitable organizations are required to provide the value of all investments that will mature in more than one year.

¹⁵ The similarity in total revenue and long-term investments in 2021 is a coincidence.

Further research and review of some organizations' audited financial statements did not resolve this question, since not all organizations make these statements available online.

Table 1: Distribution of organizations by range of long-term investments 2021

# of Orgs	Range of long-term investments	% of Orgs
86	Did not specify long-term investments to CRA	55
37	< \$500,000	24
10	\$500,000 - \$1 million	6
15	\$1 million - \$5 million	9
5	\$5 million - \$10 million	3
4	> \$10 million	2.5

Source: Canada Revenue Agency 2021

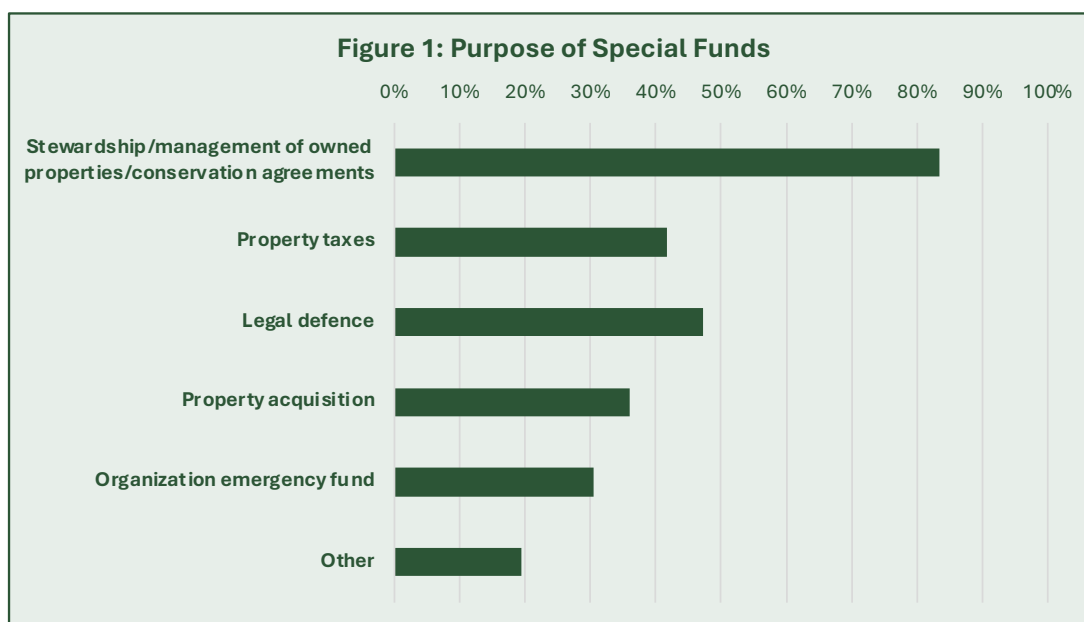
Approaches to Investment Management

Purpose of Special Funds

For the purposes of this study, 'special funds' refer to any funds set up by the private land conservation organization to generate income, such as endowment, restricted, and/or reserve funds. The purposes assigned to special funds include:

- Stewardship/management of owned properties/conservation agreements
- Property taxes
- Legal defence
- Property acquisition
- Organization emergency fund

In response to CLC's endowments survey, of the 38 responding organizations, 84% hold restricted/reserve or endowment funds, while 16% do not. Of the organizations that hold special funds, most hold more than one type of fund, with 97% holding endowment funds, 69% restricted/reserve funds, and 14% other funds, such as contingency or investment funds. The top three purposes served by special funds are stewardship and management of properties, legal defence, and property taxes. (Figure 1)



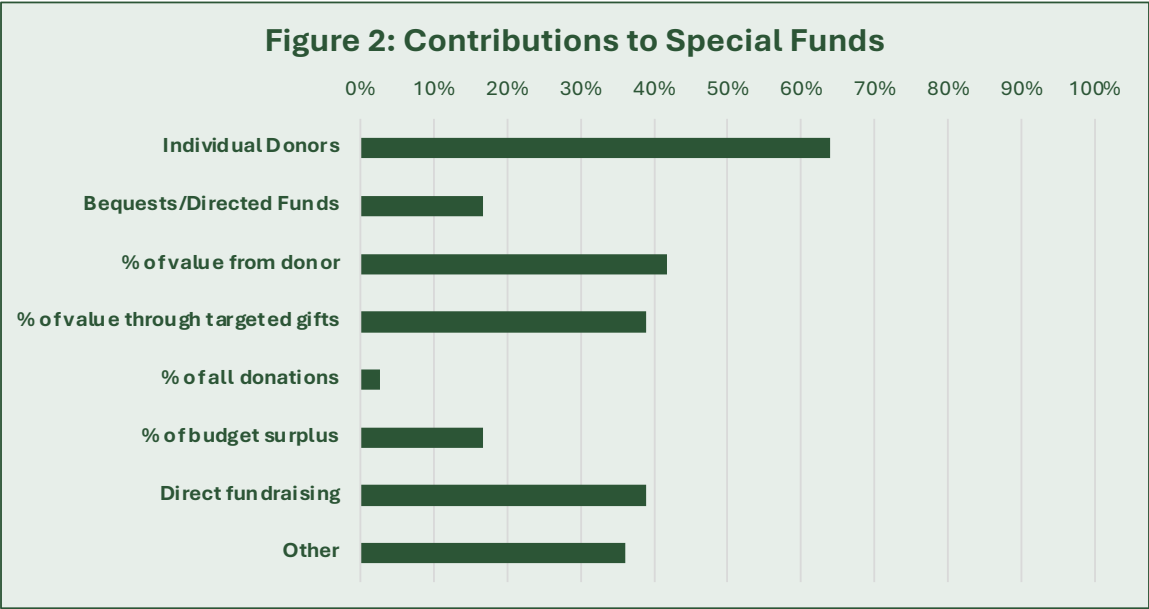
*% calculated based on survey response

Managing and Growing Special Funds

The financial management of special funds also varies, with organizations using more than one strategy. Over half, 53%, have a special committee of the Board of Directors, 42% rely on their financial institution, and 34% have their special funds held in a community foundation. A few organizations noted that they use an ethical investment firm or a financial advisor.

Private land conservation organizations also reported using a variety of strategies to contribute to their special funds. Most organizations that participated in the study rely on individual donor contributions and a percentage of the value of the property donated by the landowner to go into an endowment or restricted fund, such as 15% – 20% (Figure 2). Whatever way they promote the opportunity to contribute to their special fund, however, requires the dedication of a fundraiser or fundraising committee, which creates additional pressure on their annual operating budget.

“We have a professional investment manager--overseen by the [Executive Director] and investment committee. Governed by an investment policy approved by the board. Use of endowment income, or reserve funds is subject to board approval. We do have one small endowment fund with the community foundation.”



**% calculated based on survey response*

“The Board may designate some of our annual surplus to special endowment/ reserve funds. We build stewardship endowment funds into fundraising campaigns for properties. We ask land donors to contribute and sometimes do specific directed campaigns to raise endowment for a specific property. We calculate stewardship endowment needed to generate required funds annually (income) and seek to raise that amount for the endowment through these various approaches.”

“This potential [to grow funds] is largely limited by constraints related to the use of revenues generated by funds financed by [other programs] which prohibit the use of these revenues to finance the stewardship of other protected areas of the conservation organization or their general management costs which are not directly linked to the protected areas thus financed.”

Goals for Special Funds

The information shared by private land conservation organizations regarding the current impact of their special funds on their budgets for stewardship and other expenditures, and goals for their growth reflect widely different financial situations and timelines for growth. Currently, 42% of the respondents to the survey reported not taking any return on their investment into their operating or stewardship budgets while 18% receive no more than 10% of their annual budget from such an investment (Table 2). One organization reported having all its stewardship costs covered by the return on investment (ROI) from special funds, with enough left over to apply to other purposes.

Table 2: Percentage of current operating and stewardship funds coming from special funds

% of current operating and stewardship funds that come from special funds	Unsure	Zero	<10%	10% - 30%	>30%
% of organizations*	5%	42%	18%	13%	21%

**% calculated based on survey response, with some answers blank*

Nearly half of respondents, 47%, reflected aspirational goals for their ROI to cover stewardship and other operating costs ranging from 30% to 100%. Many respondents drew a clear distinction separating stewardship funds from funds to support other operational costs. The growth in special funds needed to attain these goals, based on a suggested 3% ROI, varied widely among survey respondents. Many were uncertain, some expressed no need for growth, while others shared specific ranges, such as needing a fund three to ten times larger than their current level (Table 3).

Table 3: Percentage goal of budget to be covered by returns on special funds

% goal of organization's operating and stewardship budget to be covered by returns on special funds	Unsure	Zero	<10%	10% - 30%	>30%
% of organizations*	13%	13%	5%	21%	47%

**% calculated based on survey response*

This survey data presents a snapshot of a diversity of situations and experiences within the private land conservation sector, with some organizations much further along the road in the growth of their special funds. It shows the potential for growing these funds in order to stabilize operating revenue and increase the sector's capacity for ongoing stewardship of their properties and operation of their organizations.

Survey respondents shared a variety of scenarios regarding the current impact of their special funds and organization goals for growth:

"We have not yet started using the income--we are letting the funds grow for now, while we are able to cover these costs through operating funds."

"We drip out 4% of the stewardship fund (60-90k) annually for stewardship activities."

"Ideally with inflation we could be topping up [our endowment fund] beyond what each project contributes. We don't have a set goal, but it is pretty healthy at \$1.2M. Ideally, we would like it to be big enough so that it could generate the salaries of our stewardship staff."

"Don't wish to cover any of our operating expenses through our endowment fund, just the stewardship costs of the reserves we own."

"We would like to be in a place where we are covering 100% of stewardship/land management costs through our stewardship endowment (but that amount will grow each year as we protect more land!) and haven't confirmed target for operations, but likely somewhere between 30%-50% of operating costs being generated by our operating endowment. The operating reserve is not intended to cover annual budget costs, but to be there if needed/emergency fund."

"We presently have over \$1 million dollars in our Endowment Fund. This is sufficient to produce enough ongoing income as dividends to support all the stewardship costs of our existing reserves with some excess amounts available to us to support new acquisitions in addition to the existing reserves."

"About 10x larger, we use some funds directly right now."

"All stewardship costs are paid for out of the dividends produced from the Endowment Funds. Generally, the fund presently produces more proceeds in dividends than are needed for the stewardship of the properties each year. Left over amounts of funds generated are available to support new land purchases, and other needs."

Benefits of Enhanced and Predictable Funding

Private land conservation organizations continue to voice the importance of sufficient, predictable funding for stewardship and operations. The challenges shared by organizations reflect the reality that they experience in funding their capacity needs. For example, research for *Forever Protected?* showed nearly 85% have limited or no paid staff, which can affect their ability to implement a variety of activities, such as:

- monitoring, collecting, and tracking details about the properties
- reporting and meeting with landowners regularly (ranges from annual to triannual)
- tracking land sales and changes to land title
- providing best management practice tools or training for landowners
- maintaining contact with landowners
- completing long-term management plans for every property
- supporting internal policies and financial management related to stewardship activities and investments
- building connections with Indigenous communities
- maintaining good relations with neighbours of conservation lands
- engaging professional expertise when needed
- fundraising and grant responsibilities require a significant time commitment—multiple funders are usually needed to meet budget needs¹⁶

Through an interactive webinar conducted by CLC in September 2023, participants from private land conservation organizations identified specific stewardship activities needed to maintain or enhance the conservation benefits of their properties, but which go unactioned in the absence of enhanced and predictable funding:

"Restore a historical wetland"

"Tall Grass Prairie restoration"

"Improvements in degraded riparian areas along streams/rivers, i.e. tree planting"

"Garry oak meadow restoration and securement with special focus on invasive grasses"

"Restoration of plantation forests to move towards a more natural forest structure"

"Help private landowners who have donated easements with resources to help them with impervious trails, maintaining safe tree cover and forests generally."

¹⁶ [Forever Protected?](#)

"Larger scale management of invasive species."

"Protection of the dry Douglas Fir geo-bio zone."

"Wetland and upland restoration and restoration of habitat for species at risk."

"Maintain an open area (27 ha) by mowing annually to preserve habitat for species at risk."

"Might enable us (as a province wide org) to hire regional (rather than centralized) stewardship staff to deliver projects more efficiently."

"The 'boring stuff' is how we use our SEF income. The high priority projects get funded through project grants, contributions, and private donors. More \$\$ in a national program would enable us to do the 'boring stuff' better."

"Part of stewardship is education - all our current grant money is earmarked for the land and associated costs but outreach to the schools or starting a regular program to get youth interested in citizen science locally and build the next generation of people to care for the land."

"Secure lands with high potential/need for forest restoration and use stewardship funding to plant trees and maintain (i.e. invasive plant control) for 5-10 years following planting."

The Potential of a National Conservation Endowment Match Funding Initiative

The focus of this study is on the potential for a national conservation endowment match funding initiative to help grow long-term investment in support of stewardship and sustainable operations of private land conservation organizations. CLC explored participating organizations' views on whether such an initiative might contribute to the growth of endowment funds.

In the response to CLC's survey, 87% of organizations confirmed that a federally funded program would assist them in leveraging additional donations to match a federal contribution. In the event that an organization would not be able to leverage additional donations, 71% would turn to their annual operating budget to match a contribution. Participants in the webinar commented that:

"Our land trust works almost entirely with conservation easements that are very costly for the private donor. If we could have matching funds for the stewardship endowment that right now they have to provide, that would be a boost in our ability to interest more easement donors."

"The opportunity to solicit funds through a matching program would give a concrete goal we could report back on as donations come in."

"It wouldn't make a big difference to our donors. We raise 15%-20% of appraised value for the stewardship endowment fund. Have achieved this with our donors for each property acquired."

"Matching increases donor value!"

"Matching is very helpful. We fundraise 20% of the market value/purchase price of each property we acquire."

"We have limited fundraising resources but leverage from matching funds would assist fundraising efforts."

"We are managing a lot of invasive species and doing a lot of restoration projects, all those projects are paid for externally through grants or special programs. But our general funds don't cover everything we need to do that work."

Securing match funding appears to be a challenge for some organizations. It is important to consider that 13% of survey respondents reported that a federal matching program wouldn't help them leverage additional donations and 29% wouldn't be able to match a federal contribution from their annual operating budget. Some of the barriers to raising a matching contribution and participating in a national conservation endowment match funding initiative that were shared include:

"I am not aware of any charitable foundation that would be willing to support us by providing funds for this purpose. Most foundations offer funding for specific projects or land purchases but exclude endowment fund raising as a possible reason to provide donations to us. Our own members are already supporting the Endowment Fund as part of their donations when they support each land purchase. I doubt a separate appeal to the members to donate just to the Endowment Fund with no particular target property in mind would be appealing."

"Only the usual -- donor fatigue -- so many organizations asking for money. Also, [another land trust] is very active in our region and probably attracts funds for its projects from local donors."

"Challenge of fundraising due to limited human resources dedicated to fundraising."

"Impact on operating budget."

"Donor burnout, we can only go to our donor pool for significant additions to our funds a limited number of times. We would include fund additions in any new acquisition project funding target, but increases that risk on not reaching a goal successfully."

"[Organization] uses matching funds to securing other soft funding particularly from the Federal government. These sources are limited, and time consuming to access and manage."

"Our fundraising is maxed out supporting the operating costs though for acquisitions we have been able to raise additional amounts. Not known what response would be made to 'matching.'"

"Main barriers would be capacity to do endowment fundraising on top of other fundraising, but it would be worth it! Sometimes endowment/reserve funds are less sexy/appealing to donors, but with good marketing/messaging it's possible. Having a fed match would definitely motivate donors, and open the door for events, appeals and special fundraising initiatives focused on endowments/raising the match. We could also raise match through land campaigns where a portion of funds would go towards endowment. We have some other funding partners who will provide some endowment funding (if matched). So great potential. Having a national program and federal investment shows donors, corporate partners, foundations etc. that endowment are essential/important/worth investing in."

"We currently raise all the funds on our own so any match would be amazing. Most grant funding for other costs are 1:1 so anything greater than that is fantastic."

A few suggestions arose from the interactive webinar that would help enable the participation of private land conservation organizations:

"Create standard language, fundraising appeals, communications and marketing that land trusts with less capacity can just adopt and put on their letterhead, or the regional groups like OLTAs could take on a provincial fundraising campaign and distribute based on some criteria."

"Ensure that application requirements are simple, save key information about applicant so it doesn't have to be repeated in future, request documents that applicant already has, such as financial statements, and do not require new documentation just for this program."

"[Ensure that] reporting and application requirements aren't a barrier for small community-based land conservation organizations that may only be accessing smaller amounts."

"Ensure that reporting detail is reasonable for the amount of funding available."

"Follow fair market value of land at time of acquisition or agreement to establish fiscal stewardship obligations that link to goals of endowment program."

"Hold an amount of available funds designated for smaller land trusts only."

"Ensure that funds generated are unrestricted and can be used for all stewardship costs (e.g. property tax, insurance, staff time for monitoring, admin)."



PART THREE: ENVISIONING A NATIONAL CONSERVATION ENDOWMENT MATCH FUNDING INITIATIVE

Raising Funds for Stewardship and Operations

Private land conservation organizations receive support for their operations and long-term stewardship of their properties through government and private foundation grants, as well as individual donors. These opportunities could be expanded, for example, by modifying the eligible expense criteria of existing funding programs to include investments in endowments, like the Alberta Land Trust Grant Program that accepts investment in a stewardship endowment fund as an eligible expense¹⁷, Québec's Partenariat pour les milieux naturels program¹⁸, or the initiative Accélérer la conservation dans le sud du Québec¹⁹ that contributes to organizations' stewardship endowment funds, and by establishing new funding programs designed explicitly to build capacity.

This study focuses specifically on a national conservation endowment match funding initiative as an additional strategy to support private land conservation organizations to achieve the financial sustainability needed to support their operations and steward their properties and agreements in perpetuity. In so doing, it is examining this approach as an important addition to the sector's funding toolbox, as a means to enhance the ability of organizations to generate funds for operations and stewardship and incentivize donors to contribute. The potential utility of and need for such an initiative to support private land conservation organizations is of interest to Environment and Climate Change Canada and also emerged from consultations with the sector and research reported in *Forever Protected?*.

The following considerations for such an initiative draw heavily on the experience of Heritage Canada, which launched the Canada Cultural Investment Fund – Endowment Incentives Component (CCIF-EIC) in 2001 to support the development and growth of endowment funds for arts organizations.²⁰ An evaluation of the program showed that it is providing important benefits to the arts sector, which has advocated for an increase in funding.²¹

¹⁷ Government of Alberta, [Alberta Land Trust Grant Program](#)

¹⁸ Conservation de la nature Canada, [Projet de partenariat pour les milieux naturels \(PPMN\) 2019-2023](#)

¹⁹ Government of Québec, [Accélérer la conservation dans le sud du Québec](#)

²⁰ A detailed review of the CCIF-Endowment Incentives Component is available in [Forever Protected?](#)

²¹ <https://www.canada.ca/en/canadian-heritage/corporate/publications/evaluations/grouped-art-evaluation.html#tbl9>

Design Considerations

Organization eligibility

Considerations with respect to the eligibility criteria for organizations to participate in a national endowment match funding initiative can be drawn from existing federally-funded programs, in particular the Land Trusts Conservation Fund (LTCF) of the National Heritage Conservation Program and the CCIF-EIC.

For the LTCF, applicant organizations must:

- be a Canadian land trust as defined in the *Canadian Land Trust Standards and Practices* (CLTSP) 2019.²²
- be registered as a charitable organization.
- be in compliance with or working towards substantial compliance with the CLTSP (2019)²³ or *Guide des bonnes pratiques en intendance privée: aspects juridiques et organisationnels*, supported by a Board resolution or confirmed through an attestation by a senior officer of the organization; and
- have an established stewardship endowment fund policy at the time of application that outlines how the applicant manages endowment funds for the stewardship of project lands in perpetuity.
- Under the CCIF-EIC, eligible arts organizations must:
 - have a partnership with an associated foundation²⁴, which can be either a foundation dedicated to the specific arts organization or a community foundation.
 - have a minimum of three years in operation prior to the application with audited financial statements; and
 - demonstrate a specific level of financial stability, and long-term viability, that is determined through a calculation of its net assets ratio – a negative net assets ratio greater than 15% makes the organization ineligible for the program.²⁵

Basic eligibility criteria under a national conservation endowment match funding initiative should consider these seven elements drawn from the LTCF and CCIF-EIC programs.

In the endowment survey, 34% of respondents indicated they invest their special funds with a community foundation. It should be noted that the approach of establishing a dedicated charitable foundation to support fundraising efforts and manage the organization's investments, like the Women's College Hospital Foundation to support the Women's College Hospital, has uptake within other charitable sectors, like the arts or healthcare sectors, but is very rarely utilized by the private land conservation sector.

²² A land trust is defined by the CLTSP as "a not-for-profit conservation organization that, as all or part of its mission, actively works to conserve land by acquiring land or conservation agreements (or assisting with their acquisition) and/or stewarding/managing land or conservation agreements [and] may include other types of conservation organizations, including federal, provincial or municipal entities."

²³ https://aclt-acoc.ca/wp-content/uploads/2021/01/cltsp_2019_en_final.pdf

²⁴ An associated foundation is a publicly registered charitable foundation, as described in subsection 149.1(l) of the Income Tax Act, with a mandate to accumulate, administer, and invest capital assets for the purpose of providing part or all the annual income to the beneficiary arts organization.

²⁵ [Forever Protected?](#) Centre for Land Conservation 2022

Matching Funds

The CCIF-EIC contains eligibility criteria for matching funds raised by arts organizations from private donations. Match funds can be donations from sources such as individuals, corporations, and non-government foundations. Some arts organizations have also raised matching funds by adding a small endowment surcharge on ticket sales.²⁶ Match funds can also include an amount that the organization decides to donate in perpetuity out of its own assets to an endowment held by its dedicated foundation or a community foundation.

With respect to funds considered as ineligible for matching, the CCIF-EIC excludes:

- Public funds from any level of government
- Pledges
- Bequests in probate
- Annual revenues generated by an existing endowment fund
- Private sector donations for which matching funds from the CCIF (or other government fund) have already been granted

The CCIF-EIC expects the full amount of the match funds identified in an application to be invested in the endowment, even if those funds are not fully matched by the CCIF-EIC. The unmatched funds cannot be used by the organization in future applications to the CCIF-EIC.

The CCIF has also established a minimum threshold of \$5,000 per application. As such, the applicant organization is required to deposit a minimum \$5,000 of private sector donations with their associated foundation over the 24 months preceding the deadline for applications.

As noted previously, respondents to CLC's survey revealed that for 13% of organizations a federal matching program wouldn't help them leverage additional donations and 29% wouldn't be able to match a federal contribution. Participating organizations shared some suggestions to help ensure access.

"Permit a match for this funding from other federal funding sources."

"Establish a match requirement of 1:1 or even better to enable organizations to access more donors effectively."

"Scale match requirements according to the size/annual budget of organization, i.e. very small, volunteer-led land trusts require lower matching than large provincial/national ones."

"Match requirements should fast track smaller organizations that have greater liability until certain level of endowment is reached."

"Permit match from whatever funds possible, emphasis should be on dollars and not where they come from."

"Funds generated are unrestricted and can be used for all stewardship costs (e.g. property tax, insurance, staff time for monitoring, admin) and not just for "exciting" stewardship work like restoration or other active management."

Whether the match funding eligibility provisions of the CCIF-EIC are fully applicable to a national conservation endowment initiative needs careful consideration. In light of potential challenges some private land conservation organizations may face in securing such funds, the opportunity to reinvest revenues generated by endowments as eligible match is one eligibility criterion that should be considered.

²⁶ Ibid

Prioritized access to funds

The CCIF-EIC does not prioritize among applicants. Although the program matched private donations on a dollar-for-dollar basis at its launch, the total annual amount applied for now exceeds the funding available. As the CCIF-EIC funds all applications received each year, it prorates program funds on a

“We also need to take the time to establish the real burden of stewardship-related expenses based on the size and types of protected areas, which do not all require the same attention. We need to establish a normative framework to compare [conservation organizations] and fairly establish their stewardship needs.”

basis proportional to the amount requested by each applicant. Similarly, in the event that applications for funding exceed available funds, a national conservation endowment match funding initiative could implement the approach taken in the CCIF-EIC where program funding is prorated among applicants proportional to the amount requested by each applicant.

However, from the perspective of organizations participating in this study, a national endowment match funding initiative should take into account capacity inequities among private land conservation organizations. One approach might be a consideration of the level of current long-term investment in special funds in comparison to the annual operating expenses of an organization over, for example, the previous three completed fiscal years of operation. Organizations that have a lower long-term investment in special funds as compared to their operating budget could be prioritized for funding. In addition or alternatively, the amount of the long-term investment could be compared to the extent and value of conservation lands and conservation agreements held by the applicant. The overall objective would be to prioritize funding so that organizations establish endowments over time whose return on investment would be reasonably comparable within the

sector in relation to annual expenditures, asset value or some other appropriate factor.

An additional consideration with respect to allocation of funds could be whether the organization has participated in CLC’s Conservation Excellence Certification Program, as an independent assurance that the organization is meeting high standards of governance, financial management, and operations.

Equitable access to funding

Although the CCIF-EIC provides funds to all eligible applicants on a prorated basis, it also includes a feature designed to ensure access to funding by as many organizations as possible. Subject to certain conditions, it has established a maximum that can be requested annually. Whether such a maximum would be relevant to a national conservation endowment match funding program depends on the amount of funding in the program as well as experience gained during the initial years of such a program.

In the event that a maximum needs to be established to ensure equitable access to funding, the approach taken in the CCIF-EIC may warrant consideration. Consideration could be given to establishing a maximum amount that an organization may seek in an application and adjusted if the organization has previously received funding from the initiative.

Grants from the CCIF-EIC could go up to a 1:1 maximum ratio (one dollar for each dollar of private sector donations raised).

For each arts organization, the maximum annual amount that can be requested for matching is the lesser of 50% of the average total operating revenues of the organization’s past three completed fiscal years or:

- \$1,500,000 for arts organization whose endowment fund was granted less than \$10,000,000 from the CCIF-EIC.
- \$500,000 for arts organization whose endowment fund was granted between \$10,000,000 and \$18,000,000 from the CCIF-EIC.
- \$250,000 for arts organization whose endowment fund was granted more than \$18,000,000 from the CCIF-EIC.

Application Window

Many funding programs, including the CCIF-EIC, offer a single annual opportunity to apply for matching funds. CLC survey respondents reported different frequencies of acquisition of new properties, ranging from multiple properties per year to every few years. While an annual timeline would suit many of the private land conservation organizations, others encouraged an open application window so they can apply for the match “when needed as needed.” It was suggested that even a quarterly application window would be helpful, particularly for organizations with limited capacity.

An argument can be made that an annual window for applications is more efficient with respect to assessing total annual funding needed for the sector. In addition, it would be important to consider the implications of multiple application windows for a prioritized approach to distribution of funding, for equitable access to funding particularly in an oversubscribed environment, and for a prorated approach to the distribution of funding to all applicants if that approach is implemented. On balance, an annual application window is likely better in terms of ensuring these various considerations can be taken into account.

“The fact that the LTCF is on an annual basis is a significant issue for [conservation organizations]. The project delivery period is very short between the acceptance of the project and the period when deliverables must be provided. Several steps are required and involve delays that can be long for the acquisition of land. If the option of an annual period is retained, it will be important to allow the funds to be carried forward to the following year”

Investment of Program Funds

Similar to the CCIF-EIC, the permanence and security of the capital invested in an endowment is likely to be a key consideration in any effort to establish a federally funded national conservation endowment match funding initiative. Any funding provided to an arts organization must be invested in a manner that protects against use of the capital for purposes other than generating interest and that benefits from sound financial management to maximize return on investment.

The breakdown of participating foundations in the Endowment Incentives Program:

Community Foundations	60%
Dedicated Foundations	40%

In this regard, applications to the CCIF-EIC must be submitted jointly by a not-for-profit professional arts organization and an associated foundation. Each of those two parties must meet the respective eligibility criteria. The foundation becomes the recipient of the matching funds; the arts organization is the beneficiary of the income generated from the foundation’s investment. With an annual total disbursement budget of over \$19

million, 107 foundations are recipients of CCIF-EIC funding, including 66 community foundations. The remainder are foundations dedicated to one organization.

Private land conservation organizations have not created dedicated foundations to steer and manage their fundraising operations in the way that other sectors have, like arts, health, and education, although some have partnered with a community foundation for this purpose. A national conservation endowment match funding initiative will need to consider the different management practices organizations are using and establish requirements related to the security, permanence, oversight, and management of the capital investment. For example, to be eligible for match funding, an applicant proposing to directly manage the investment would likely be required to provide its financial investment and management policies, as well as information on their implementation.

Governance, Administration and Program Advice

There are options with respect to how a national conservation endowment match funding program could be governed and administered. The key needs with respect to decision-making relate to:

- overall program governance focusing on program design and requirements,
- program administration focusing on management of the application process and selection of successful applicants, and potentially,
- external advice on the program.

In the event that a prioritized approach is taken for the selection of applications, external advice could also contribute to this process.

It is useful to consider these decision-making needs through the lens of how a program would be administered. For the purposes of this study, two alternatives are examined, although there may be others also worthy of discussion:

1. A government administered program

A government administered program is perhaps the most straightforward with respect to decision-making. Overall program design elements as described above would likely be approved by the Minister of the department administering the program with ongoing oversight by departmental senior management. Program administration and funding decisions would be managed internally by the Directorate charged with implementing the program. Periodic reviews as required by government audit and evaluation policy would provide opportunities for feedback, revisions, and updates to the program.

The CCIF-EIC is administered by Heritage Canada, as the ministry whose portfolio includes arts organizations. Likewise, the Canadian Wildlife Service (CWS), Environment and Climate Change Canada, is well placed to administer a national conservation endowment match funding program given alignment with the mandate of and administration by CWS of several complementary funding and incentive programs for land conservation.

2. Third-party administration of the program

There are a number of possibilities for third-party administration of a national conservation endowment match funding program. Selection of a third-party, non-government organization to administer the program should consider factors such as familiarity with the private land conservation community, experience in the administration of funding programs, capacity to implement a national program, and knowledge of financial investment strategies. The selected organization should also have a governance structure that would enable and support the development and delivery at the national level. Other useful factors to consider could be the capacity of the administering organization to raise awareness of the match funding program, the potential of the organization to assist in raising match funds, and ability to directly invest in sustainable land conservation through a contribution to an endowment.

How each of the three areas – program governance, program administration, and external advice – is addressed will vary depending upon the organization selected to administer the initiative.

Projecting the Investment Needed

While special funds can be created for various purposes, the organizational objective of the fund is often to establish an investment of sufficient size that the annual return on investment covers a portion of the organization's operating budget. In this way, organizations are able to bring a level of stability to annual budgeting and work planning and mitigate the impact of fluctuations in fundraising efforts from year to year. Although there seems to be variability in how private land conservation organizations report data to the CRA, it is possible to develop from available data an understanding of the level of investment needed in a national conservation endowment match funding initiative to grow organizations' endowments and improve over time the level and predictability of their annual operating budgets.

For the purpose of developing an estimate of the financial requirements of a national conservation endowment initiative, CRA data on "total expenditures" not including gifts to qualified donees and on "long-term investments" was used. Sector-wide information on stewardship expenditures alone and long-term investments just for the purpose of establishing stewardship endowments is not readily available. CRA data on "total expenditures" provides information about overall expenses, from overhead to stewardship of conservation lands, monitoring of conservation easements and acquisitions. CRA data on "long-term investments" provides information on overall investments rather than for specific purposes such as stewardship. As reported by 157 private land conservation organizations, CRA data from 2021 indicates expenditures of \$321 million, not including gifts to qualified donees, and specified long-term investments reported of over \$502 million. This is the best available information upon which to estimate the financial requirements for a national conservation match funding initiative.

The scenarios outlined in Table 4 are based on the \$502 million held in long-term investments and the expenditures of \$321 million that 157 private land conservation organizations reported to CRA in 2021. The gap to cover 10%, 20%, and 30% of annual operating budgets is calculated on ROI scenarios of 3%, 4% and 5% averaged over ten years. Covering 10% of operating budgets, for example, based on a 5% ROI, would require an average of \$14 million per year for 10 years. As a matched investment, in 10 years, this would result in covering 20% of operating budgets from annual disbursements from endowments and increase the financial security and capacity of the sector.

Table 4: Comparison of funds needed at different rates of return on investment (\$millions)

Examples	% of operating covered	ROI	Total amount needed	Additional amount needed	Per year allocation over 10 years
1	10	3%	\$1,070.0	\$567.6	\$56.8
2	10	4%	\$802.5	\$300.0	\$30.0
3	10	5%	\$642.0	\$139.6	\$14.0
4	20	3%	\$2,140.1	\$1,637.7	\$163.8
5	20	4%	\$1,605.1	\$1,102.6	\$110.3
6	20	5%	\$1,284.0	\$781.6	\$78.2
7	30	3%	\$3,210.1	\$2,707.7	\$270.8
8	30	4%	\$2,407.6	\$1,905.2	\$190.6
9	30	5%	\$1,926.1	\$1,423.6	\$142.4

The private land conservation sector holds over \$2.6 billion in total assets, including assets such as land, buildings, investments, and equipment. This does not account for the value the sector represents for biodiversity, land protection and restoration, carbon storage, and climate resilience. An investment of \$140 million over 10 years to increase the financial security and long-term sustainability of the sector represents 5.4% of its current total assets of \$2.6 billion.

Overview of Community Foundations

As noted earlier, private land conservation organizations use a variety of approaches to managing long-term investments. Although reliance on a dedicated charitable foundation to manage investments and support fund raising efforts of the organization has strong uptake within other charitable sectors, such as the arts, health and education, this strategy has rarely been taken up by private land conservation organizations. Instead, some have established relationships with community foundations. As such, this section focuses on publicly registered charitable foundations, specifically community foundations. Consideration of community foundations is warranted in light of the important role they play in the Endowment Incentives Component of the CCIF.

Community foundations (CFs) are registered charitable organizations and independent public foundations “seeking to make long-term and meaningful philanthropy in a defined geographic area.”²⁷ They are each governed by their own Board of Directors. They work to pool philanthropic donations as endowment funds which are invested to support ongoing grantmaking using the net gains from investments. They can also establish and manage funds for specific purposes. Their primary purpose is to address the challenges within the local community and focus on improving and sustaining a good quality of life for everyone.

The Oakville Community Foundation

“Community foundations are organizations seeking to make long-term and meaningful philanthropy in a defined geographic area.

Local donors who want to make donations or establish a foundation, including families, individuals, businesses, and nonprofit groups, can establish funds within community foundations. Those funds are then pooled to create an “endowment”: the capital is invested, and the gains are used to support ongoing grantmaking.

Community foundations take a leadership role in identifying a community’s challenges and pressing needs. We serve as storehouses of research, funds, and information about impact. And we provide grants to support effective nonprofit organizations.”

The history of community foundations in Canada begins in 1921, with the incorporation of The Winnipeg Foundation based on a large first donation of \$100,000. By 2012, over 191 CFs held more than \$3.4 billion in assets. That growth in the first 90+ years has since been eclipsed, with 201 CFs holding nearly \$6.4 billion by 2020²⁸ (Table 5), and individual CFs ranging in size from less than \$2 million in assets to \$1.6 billion.^{29 30} As a rapidly growing segment of the philanthropic sector, the network of CFs is supporting long-term financial stability of charitable organizations through their endowment funds, deepening

their knowledge and expertise of grantmaking to the charitable sector, and delivering leadership on community action on social equity and inclusion. Most CFs are in southern Canada and are found in every province.³¹

Table 5: Breakdown of CFs and Total Assets

Geography	Number of CFs	Total Assets (millions)
Total	201	\$6,392
Quebec	11	\$351
Ontario	51	\$1,485
British Columbia	52	\$2,013
Alberta	12	\$ 742
Manitoba	56	\$1,544
Other provinces & territories	19	\$ 257

*Source: Community Foundations Canada

27 [The Oakville Community Foundation](#)
28 https://communityfoundations.ca/wp-content/uploads/2019/04/Section-1.4_CommunityFoundationStartUp_Manual_2014.pdf
29 <https://communityfoundations.ca/find-a-community-foundation-map/>
30 https://www.wpgfdn.org/wp-content/uploads/2023/01/WpgFdn_Audited_Financials_2022.pdf
31 [Additional information on community foundations can be found in Annex 3.](#)

While more targeted research is needed to assess the level of investment by the private land conservation sector, the Alliance of Canadian Land Trusts reports that 51% of organizations hold endowment funds. Furthermore, 34% of CLC survey respondents mentioned that they hold endowment funds with a community foundation. This represents an opportunity for Community Foundations of Canada and local community foundations to partner with the private land conservation sector to create an investment opportunity that is inclusive of the needs of small to large organizations. This approach could explore the potential for community foundations to assist with the match, similar to the program of the Winnipeg Foundation.

Governance, Administration and Program Advice

A community foundation offers a variety of fund types to meet the needs and expectations of donors. From a donor's perspective they provide competent fund management, low risk investment strategies, lower administration fees and greater rates of return based on pooled funds within a larger diversified portfolio. They accept donations of cash, bequests, life insurance, retirement funds, public securities, and advisor managed funds. The main types of funds offered to donors through a CF include donor designated, donor advised, field of interest, agency funds, and flow-through funds (Table 6).

Table 6: Main types of funds offered through a community foundation

Type of Fund	Description
Donor designated	Donor selects recipient charities, CF administers donation
Donor advised	Donor administers grants directly to chosen charities
Field of Interest	Donor identifies area of charitable interest to support; CF chooses charities for fund disbursement
Agency Fund	A permanent endowment established by a charitable organization to sustain its work over the long term, CF owns and manages the fund
Flow-through	Income generating fund that permits charity to access capital for organizational needs, also known as non-permanent fund

Agency Endowment Fund

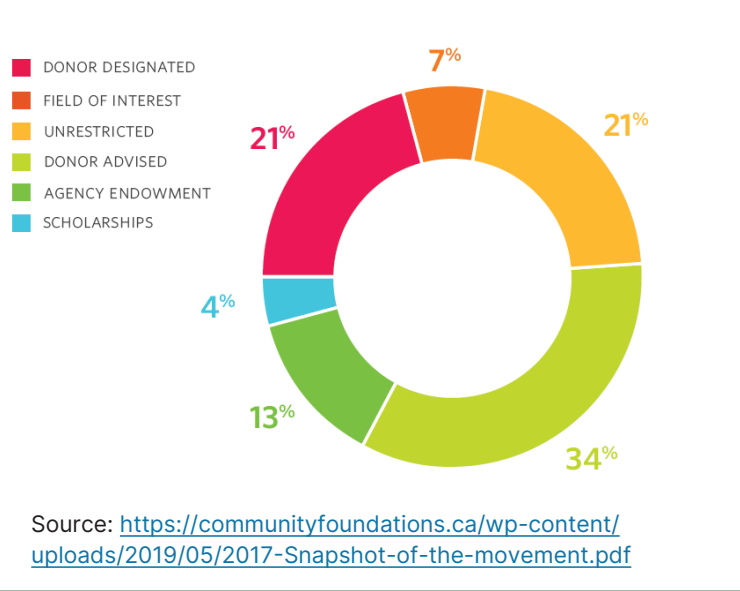
An agency endowment fund is the CF investment mechanism that is most relevant to this feasibility study as the fund is set up by a charitable organization to support its work and long-term needs. They are a permanent professionally managed investment that a charity can build through a variety of strategies, including marketing to potential donors. The capital invested is owned by the CF, and the charity that established the agency fund receives an annual disbursement to use for their own purposes. Donors receive a charitable tax receipt.

This category of funds goes by different names among community foundations, such as 'managed fund', 'hosted organization fund', 'registered charity fund', 'endowment fund', and 'charitable organization endowment fund'.

In 2017, 13% of endowed assets fell into this category of funds, compared to 34% from donor advised funds, and 21% from unrestricted funds (figure 3).

Although environmental charities have a

Figure 3: Allocation of endowed assets based on fund type



low rate of uptake within the 13% of endowed assets categorized as agency endowment funds, there is increasing interest by community foundations in working with environmental charities so that they can take advantage of the services and benefits offered by community foundations. Table 7 provides examples of community foundations that hold agency funds for environmental charities.

Table 7: Examples of environmental agency funds held by community foundations

Community Foundation	Total # of Agency Funds	# of Environmental Charity Agency Funds	% of Total
Toronto	26	2	~ 8%
Fredericton	10 (Managed Funds)	1	10%
London	31	2	~6%
Winnipeg	230	11	~ 5%
Greater Montreal	207	2	~ 1%
Victoria	195 (Hosted Org Funds)	23	12%
Southeastern Alberta	25	1	4%

The responsibilities between the charitable organization and the community foundation differ. The charitable organization is responsible for promoting its agency endowment fund to its stakeholders and potential individual donors, determining the amount to contribute to the fund, and directing the annual income from the fund to the activity of its choice as the endowment fund is unrestricted. The CF offers services to help promote the agency fund on behalf of the charitable organization.

The CF is “the owner and only beneficiary of the portfolio as is required by the Canada Revenue Agency (CRA) to comply with the ability to provide a charitable receipt for donor contributions.”³² Its investment policies direct the establishment of the asset mix of the portfolio, including evaluation benchmarks, and the regular review of the fund’s performance. The annual distribution quota is based on a few factors, including the CRA’s disbursement quota, which is 5% as of 2023, the preservation of capital, and the CF’s annual investment returns and administration fee, which ranges between 1 - 3%. As with any investment, an underperforming market could impact the amount of the annual disbursement. However, CFs determine their annual disbursement based on a multi-year rolling average of their rates of return in order to minimize any negative market impact.³³

Community foundations provide a ‘readiness’ checklist for charitable organizations to review before they embark on establishing an agency fund. The Victoria Foundation provides a list of 20 questions the charity should consider³⁴, while the Community Foundation of Southeastern Alberta provides the following seven:

1. As an Agency, will we be around in perpetuity?
2. Is an Agency Endowment Fund in alignment with our Agency’s mission and vision?
3. Our timeline or need for funds is generally not immediate?
4. Are we ok with the costs associated with managing an Endowment Fund?
5. Will our Board of Directors be comfortable authorizing and overseeing an endowment?
6. Will our current donor listing contribute to an endowment?
7. Will the creation of an endowment fund have a negative impact on our fundraising efforts?³⁵

³² <https://cfsea.ca/wp-content/uploads/2023/09/Agency-Use-Endowment-building-toolkit-FINAL-VERSION-AUG1-3.pdf>

³³ Ibid

³⁴ https://victoriafoundation.bc.ca/wp-content/uploads/2023/12/202311_Thinking-Long-Term.pdf

³⁵ <https://cfsea.ca/wp-content/uploads/2023/09/Agency-Use-Endowment-building-toolkit-FINAL-VERSION-AUG1-3.pdf>

Setting up an agency fund comes with benefits and drawbacks that should be considered from the perspective of a private land conservation organization. Among the many professional benefits that CFs offer with respect to fund management, the fund as a permanent investment resonates strongly with the mission of private land conservation organizations to protect their properties in perpetuity. The principal capital is preserved and grows over time, building financial security the organization can depend on. The flipside of this benefit is the drawback that the principal is not accessible if the organization needs it for another purpose. It is permanently tied to the endowment.

From a donor perspective, many will be attracted to the opportunity to give a lasting gift through the endowment fund, while others might prefer to give to immediate needs and question the strategy of tying up funding in an endowment.

To start an agency fund, many CFs recommend a minimum investment from as low as \$5,000.³⁶ Community foundations can also offer other investment opportunities once the first agency fund is established, such as setting up additional subfunds or offering matching contributions to help the organization grow its endowment. The organization must also:

- Be a registered charitable organization
- Create an endowment-building strategy as part of its financial plan
- Submit board minutes reflecting the approval of the Agency Fund relationship
- Complete a fund agreement with the community foundation³⁷

Partnership benefits for community foundations

At the level of community engagement, health, and action, working with private land conservation organizations supports and deepens the mandate of CFs on fundamental issues related to long-term community health for all and connects with a more explicit environmental focus:

- habitat protection is key to healthy landscapes for communities
- healthy landscapes are important for climate resilience
- donors are exposed to the opportunity to support private land conservation organizations
- the charitable land conservation sector has an urgent mandate to expand its resources and impact
- the financial management expertise of CFs is expanded within an underserved sector

Partnership benefits for private land conservation organizations

Most importantly, private land conservation organizations benefit from the financial management expertise housed within community foundations and inclusion in a larger pool of investors that would help ensure a reliable rate of return. Community foundations also provide access to other funding opportunities and could connect the private land conservation organization to a larger group of potential major donors. This opportunity could be an important strategy for an organization to help raise matching funds.

Working with community foundations also:

- aligns with locations of most private land conservation organizations,
- aligns with goals to deliver leadership on community action that can support goals of land protection and restoration,
- brings the message of environmental protection and land conservation/restoration more into the mainstream,
- enhances philanthropic message focused on the land conservation sector to more potential donors; and
- provides added capacity to market donor opportunity to support private land conservation organizations' agency funds.

³⁶ <https://www.fredfdn.ca/our-fund-types>

³⁷ <https://www.wpgfdn.org/about-us/financials-and-policies/>

Financial Policies

Investment policies

Community foundations are committed to the ESG (environmental, social and governance) framework and align their investment strategies with these goals. They have investment policies that are approved by their Board of Directors and reviewed regularly.

Disbursement policies

An endowment fund must at least be active for a full year before the charity receives a disbursement.³⁸

“The community foundation manages our entire endowment right now which is working really well because we never felt we had the capacity or expertise to manage the funds. We only put the money in once we had a substantial amount for them to manage. But because we have that now we can create sub funds for different purposes. We have had conversations about if we want to keep all our funds there because we don’t have direct access or control over those funds. But every time we think of changing it we realize we are pretty happy where we are. We have good rates with the community foundation, but can’t access capital anymore.”

Disbursement policies vary among community foundations. A community foundation can stipulate the amount of money the endowment fund needs to hold before the charity will start to receive a disbursement which is called the threshold to grant. The London Community Foundation, for example, requires a Registered Charity Fund to hold \$100,000.³⁹

The Winnipeg Foundation’s ‘spending policy’ or disbursement objective, for example, is “to make available for annual grant making activities an amount of 4.5% of the average of the three preceding years’ market value of each fund in the Consolidated Trust Fund (CTF). The average market value is calculated on the basis of 12 quarters.”⁴⁰

³⁸ <https://cfsea.ca/wp-content/uploads/2023/09/Agency-Use-Endowment-building-toolkit-FINAL-VERSION-AUG1-3.pdf>

³⁹ <https://static1.squarespace.com/static/5bfc0eabb105985459341f19/t/5c914df16e9a7f7ea6a1fa0a/1553026547869/Registered+Charity+Fund+Final+Oct-18-18.pdf>

⁴⁰ https://www.wpgfdn.org/wp-content/uploads/2023/01/Agency_-_Agency_Fund_Overview.pdf

PART FOUR: PERSPECTIVES ON LEGAL DEFENCE OF CONSERVATION LANDS

Risk Occurrence

While many private land conservation organizations have not yet faced legal challenges, they anticipate dealing with an increase in compliance issues, particularly when the ownership of conservation agreement lands changes hands.⁴¹ Most of the organizations that responded to the CLC survey on legal defence identify the need to increase their restricted funds or have access to legal defence support as a priority.

Legal defence ranked as the second highest priority for establishing a restricted or reserve fund by organizations that responded to CLC's survey related to endowments, with 50% reporting funds for this purpose. Levels of investment in these funds vary widely among these organizations, indicating a vulnerability for the whole sector as few, if any, organizations stated their legal defence funds were at adequate levels.⁴²

Private land conservation organizations ranked the likelihood of legal risks, with the top three being third-party trespass, dispute, damage, or theft (43%), issues arising from a change in ownership (37%), and challenges to conservation easements (30%) (Table 8).⁴³

"There is an assumption that someone is checking title, but we have had instances where a CEA [conservation easement agreement] has been ignored. There is a perfect storm when properties are changing hands where if someone isn't paying attention to existing easements, we are going to see more issues. Right now, we are gun shy about legal battles and maybe aren't protecting these CEAs as strongly as we could be."

Table 8: Perspectives of Likelihood of Risk Occurrence

Risk type	1 being least likely, 5 being most likely				
	1	2	3	4	5
External development pressures or actions	10%	30%	33%	20%	7%
Issues arising from change in ownership	37%	3%	23%	17%	20%
Third-party trespass, dispute, damage or theft	10%	13%	33%	30%	13%
Expropriation of properties	47%	27%	17%	7%	3%
Boundary challenges	27%	30%	30%	0%	13%
Challenges to conservation easements	37%	10%	23%	17%	13%
Other challenges	40%	13%	33%	3%	10%

*% calculated based on survey response

⁴¹ [Forever Protected?](#)

⁴² Centre for Land Conservation survey on stewardship endowment, 2023.

⁴³ Columns 4 and 5 in Table 1 were added to get these results.

Table 9: Hectares held in fee simple land and conservation agreements

# orgs reporting	Fee simple lands	Conservation Agreements	Total area	% of total area in fee simple lands	% of total area in conservation agreements
38	462,000 ha	535,400 ha	997,400 ha	46%	54%

*% calculated based on survey response

As two of the top three risks relate specifically to conservation agreements, this suggests that the legal risks are greater for this type of holding which aligns with the experience of the U.S.-based Terraforma insurance reciprocal facility. The implications of legal risks being more frequent for conservation agreements should be considered in light of data indicating that over half of the total area held by survey respondents is in conservation agreements (Table 9)⁴⁴. These respondents represent 24% of private land conservation organizations in Canada.

"We are starting a new program to increase our CAs [conservation agreements] so we are currently asking this question of how much we need to set aside to defend these lands. We don't have a target yet, but we aren't sure how big it should be."

Legal issues encountered

Of those organizations responding to the CLC's survey, 45% have dealt with legal issues (Figure 4). These include:

- trespass,
- plant removal,
- tree cutting,
- encroachment of building project by neighbour; and
- road use through property.

Organizations provided examples of specific issues they have dealt with:

"Survey revealed encroachment by adjacent landowner's buildings, including a new greenhouse they were building

with a permit from the municipality. Issue started in 2020 and is still ongoing. Most expenses will be covered by other landowner's title insurance. We have incurred ~\$2,500 in costs but expect that to be covered by title insurance as well. We are completing a "land swap" with the adjacent landowner so that they own the land with buildings and we will get land without, with a zero change in total land area. We now complete surveys and purchase title insurance for all fee simple lands."

"Trespass and cut of 107 trees three years ago, just resolving now via mediation, no legal costs for us but the landowner has spent \$40,000."

"Challenge for right to drive on property through Ontario Road Access Act claim, over \$300,000 spent to date and has been consuming time and energy since 2019."



*% calculated based on survey response

⁴⁴ The data on hectares in fee-simple lands versus conservation agreements was collected through CLC's stewardship endowment survey, which had a slightly higher rate of response at 38 organizations.

Legal Defence Funding and Costs

For organizations that have had to manage legal issues or disputes, funds were primarily drawn from the organization's annual budget, although endowment funds, title insurance, individual fundraising, line of credit and pro bono legal services have also been used. The main costs for managing legal disputes included fees for lawyers and additional staff, or contractors (Figure 5).

Specific strategies adopted by private land conservation organizations to raise legal defence funds included:

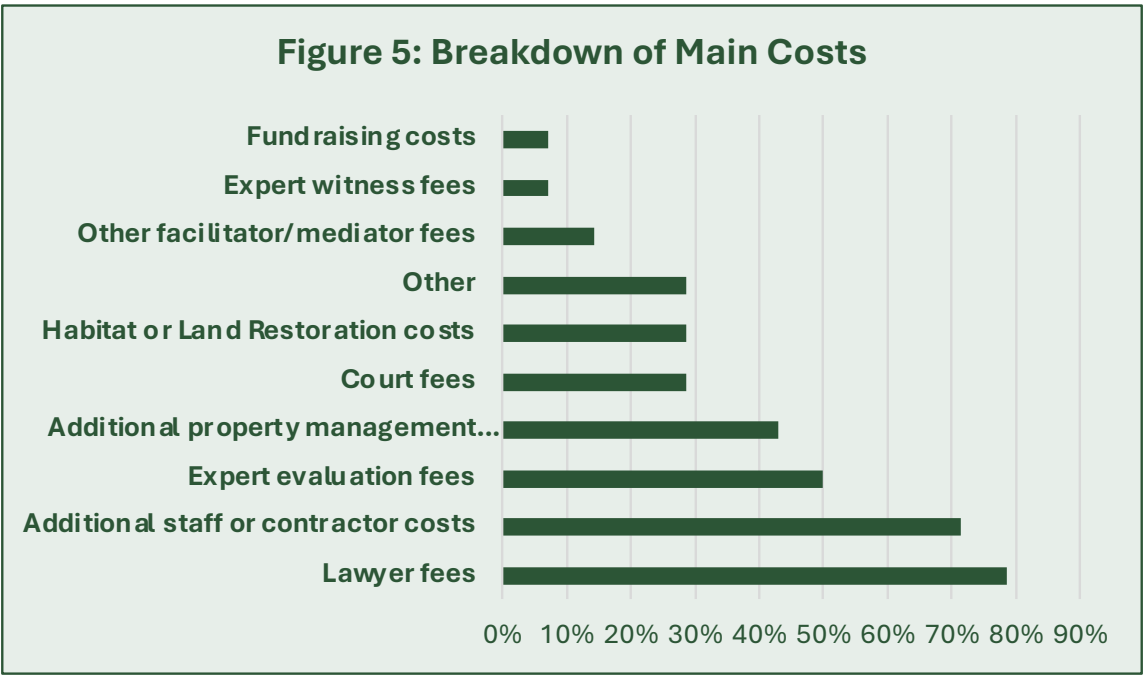
"10% on purchase price goes to legal defence and management."

"Small matching program to kickstart the idea of having a fund for legal defence."

"Internally restricted contributions from unrestricted gifts, also endowment fund which could be used [for legal defence] started by direct gifts, not great returns yet, long way off from dividends supporting activities."

"Legal funds are in GICs that we can cash any day. But if we have larger funds, we can set up a flow through account with the [community foundation]. But we do still have to request access to cash."

"It is all on the side of someone's desk. Our cost estimates aren't including staff time costs or the mental/emotional toll of a legal case. The time, hours and emotional toll are immense. Timelines get drawn out. Court dates require preparation and a lot of time."



**% calculated based on survey response*

Does the idea of a national legal conservation defence program make sense?

As in *Forever Protected?*, there continues to be general support for the idea of making conservation defence insurance available to private land conservation organizations. Organizations noted the following:

"I think it does, if we are all putting aside these funds anyways, does it matter if it is here or somewhere else as long as we can have access to it? Wouldn't it be better to pool those funds?"

"We are doing annual fundraising and surplus is going to legal defence. Some of our endowment could be released by the board in extraordinary circumstances. I don't have a goal, but I don't want it endowed, it needs to be a capital reserve. For the road access case we had \$250k in a reserve so we knew we could start. I wouldn't want millions just sitting and waiting, that seems like a waste of capital. Pooled fund is interesting because it can be added to and pulled from as needed. \$100k to be able to even start a legal battle."

"Defence program would be helpful [as we have an] extremely wealthy neighbour who likes to fight."

"Donors would be receptive to land trusts standing up for their properties, donors are worried that if they sell their land, it will be severed or developed [and are] asking about ability of organization to protect properties."

"We have about 20k in our current legal fund, which is not enough but enough to get started with legal action. We also have a pro bono relationship with a lawyer. But not sure that would maintain over a serious issue."

"When submitting lands to the protected areas database we need to demonstrate that they are protected forever. I think that this legal defence program would help demonstrate that."





PART FIVE: ENVISIONING A NATIONAL CONSERVATION DEFENCE INSURANCE RECIPROCAL FACILITY

Options for Legal Defence of Conservation Lands and Agreements

Through CLC's consultation and engagement, four possible options or approaches to providing the financial, legal, and other support to a private land conservation organization can be identified. Considerations in relation to each option or approach are discussed below.

Self-insure

As noted in Part 2, a few organizations have set aside funds or have the financial wherewithal to partially, or in limited cases, fully fund a legal defence. Some others have sufficient funds to cover initial legal costs associated with obtaining legal advice and initiating exchanges between lawyers, however, they would need financial support in the event of an extended legal proceeding in court. The majority of organizations have no or very limited amounts in such special funds or are in the process of incrementally building such funds. Even those organizations that have established more significant special funds are concerned that these may not be sufficient for a meaningful defence of their conservation lands or agreements. Generally, in the event of having to legally defend their conservation lands or agreements, organizations anticipate that they would look to redirect a portion of their annual operating budget and/or solicit additional funds to support a legal defence effort.

Organizations that provided input during the conduct of this study and previously as part of the engagement for *Forever Protected?* are not confident that the current 'self-financing' approach to mounting a legal defence of conservation lands or agreements can provide for a robust defence. A number of organizations indicated that 'simply' starting a legal defence effort may take financing in the six-figure range with unknown and potentially significant costs to see a legal defence through to a conclusion, particularly if the defence requires the attention of the court.

Organizations prefer to resolve any legal matters through negotiation first and try to avoid a costly and lengthy civil case. While this approach is ideal, it can put an organization at risk if they don't have the financial wherewithal to take a case to court when needed. If a private land conservation organization doesn't have deep enough pockets, it could find itself in the position of having to accept a less than desirable settlement.

Organizations cited other concerns or challenges associated with the current 'self-financing' approach. Funders of every stripe are interested in funding on-the-ground conservation action and thus, organizations find it very difficult to raise funds restricted for the purpose of legal defence. At the same time, organizations are also concerned about establishing sizeable restricted legal defence funds when the need to use such funds may not arise for many years, perhaps decades. Organizations struggle with the idea of setting aside significant funds when they have other pressing needs related to stewardship of conservation lands and agreements, and ongoing operations.

Ad hoc cost sharing

A number of organizations stated a willingness to share costs for legal defence of conservation lands or agreements in the event of a case that could establish a significant precedent with negative consequences for private land conservation organizations. Organizations willing to share costs of a legal defence noted that funds could be from their own legal defence special fund, if such a fund has been established, or taken from its annual operating budget. During the course of this study, no examples of the need for such collaborative cost-sharing were cited.

Challenges associated with an ad hoc cost-share approach relate to the time and effort needed to establish a partnership of organizations willing to finance a legal defence given the unknowns and uncertainties of legal disputes. While any legal dispute would likely follow a sequence of lower to higher cost approaches to resolving the dispute – negotiation, mediation, arbitration, prior to litigation – a legal defence funding partnership should be prepared to support a legal defence through to the most costly approach of litigation.

An important consideration associated with an ad hoc cost-sharing approach relates to ‘due diligence’. A potential funding partner organization can be anticipated to conduct its own enquires or ‘due diligence’ of the organization seeking financial assistance for a legal dispute, particularly with respect to the actions of that organization to avoid or reduce the possibility of a legal issue arising on its conservation lands or agreements. For example, if the matter relates to a conservation agreement, is the agreement well written and robust? Organizations may be unwilling to financially assist another organization if that organization has not conducted activities with an appropriate level of ‘legal due diligence’. Conversely, organizations seeking financial assistance may be concerned about sharing information on its operations, information that it considers confidential, such that a potential funding partner is not able to satisfactorily complete its due diligence prior to entering into a legal defence funding partnership.

Commercial insurance

Currently, commercial insurance against the risk of and costs associated with a legal defence of conservation lands and agreements is not available. Information from Dion Strategic indicates that the commercial insurance sector is unlikely to provide coverage for this risk.

In the groundwork leading up to establishment of Terrafirma Risk Retention Group LLC in the United States, the Land Trust Alliance (LTA) of the U.S. drew a similar conclusion. Terrafirma RRG LLC is a unique charitable risk pool to help conservation organizations in the U.S. defend their conserved lands and agreements from legal challenge. It is owned by its members to insure the costs of upholding conservation easements and fee simple lands held for conservation purposes when they have been violated or are under legal attack, and to provide information on risk management to those land trusts. In a report commissioned by the LTA, Betterley Risk Consultants⁴⁵ noted that insurers have several reasons for their lack of interest in this type of a product:

- “Size of market—the potential amount of premium from the Alliance membership is small in relation to other opportunities they might have. If the product already existed and they only had to adapt it to this market, there might be more interest, but that is not the case with conservation defense insurance.
- Lack of loss history—as noted above, since conservation defense insurance has not previously existed, there is no loss experience upon which insurance actuaries can base their premiums. Although the Alliance can survey its members ... to project losses and interest, a traditional insurer will rarely be interested in a line of insurance that is not based on substantial historical loss data.
- Size of premium—the amount of premium that is necessary for an individual land trust to buy conservation defense insurance is relatively small. Investing in the development of such a product for relatively small premiums is unlikely for a commercial insurer.”⁴⁶

⁴⁵ Betterley Risk Consultants is a U.S. based independent risk management consulting and research firm that focuses primarily on specialty lines and alternative risk financing strategies.

⁴⁶ Land Trust Alliance, Conservation Defence Insurance, An Analysis of Historic Data Relating to Easement Violations, Land Protection

At the same time, there may be risks to the private land conservation sector in relying on a commercial insurer to provide conservation defence insurance. As noted by Betterley Risk Consultants:

- “Lack of control—the Alliance needs to make sure that its claims are managed to ensure the long-term viability of conservation easements as a legal tool. A commercial insurer is less likely to take this approach because it must meet its profitability requirements. Although both fiscal prudence and long term interest of the Alliance membership can coexist (and indeed must if the Alliance is to continue to offer the protection), a commercial insurer is rarely interested in relinquishing claims handling control.”
- “It is critical to the land trust movement that an insurer not take the expedient way out of a claim, agreeing to settle a suit if it can be done for less than the cost of defending it. This approach would be dangerous to the land trust movement as it would encourage, not discourage, additional litigation.”⁴⁷

Conservation defence insurance facility

Based on advice from Dion Strategic and the experience of the LTA U.S., an option for private land conservation organizations in Canada to protect themselves from the risk of costly legal defence of conservation lands or agreements is the creation of their own insurance facility. The establishment of such a facility would provide a cost-shared approach to providing financial and other support for legal defence of conservation lands and agreements. The remainder of this study focuses on the option of creating an insurance facility.

About Insurance Facilities

In Canada, insurance facilities are regulated at federal and or provincial/territorial levels and provide insurance coverage to its members or policyholders. Each province and territory have their own regulatory framework, and the rules and regulations may vary slightly from one jurisdiction to another. Insurance facilities in Canada are typically established as either captive insurers or reciprocal insurance groups, depending on the specific needs and objectives of the facility. An insurance facility can be established as either a non-profit or for-profit entity.

Many groups and organizations have found that, when commercial insurance is overpriced, not available, or in a form not acceptable to their member partners, creating their own insurance facility to address their needs may be the best answer. Captive insurers are insurance companies that are established to provide coverage exclusively to a single parent company or a group of affiliated organizations with common interest. In Canada, Alberta and British Columbia have legislation to support the formation of a captive insurance facility. There are also captive domiciles outside of Canada that can be utilized. These insurers are subject to the regulations of the jurisdiction in which they are established and may also be subject to additional regulations based on the types of risks they assume.

Reciprocals are groups of businesses or organizations (called ‘subscribers’) that band together as a form of risk transfer and set up a fund as an alternative to purchasing insurance from the traditional market to provide coverage for their collective risks. Simply put, in an insurance reciprocal, policyholders pool their resources to insure each other’s risks. Each member of the reciprocal is both an insured and an insurer, and they agree to share the risks and losses among the group.

and Defense Insurance Feasibility, September 9, 2008, Betterley Risk Consultants – document provided by TerraFirma

47 Ibid

There are many benefits to creating an insurance facility, including:

- Gains in pricing stability and capacity restraints.
- Flexibility to create customized insurance coverage.
- Risk design that may otherwise be uninsurable in the 'traditional' insurance markets.
- Ability to address bespoke risk exposures.
- Potential to share in underwriting profit and investment income.
- Improved cash flow and claims reserves kept off balance sheet.
- Centralize the risk management function and reduction in administration costs.
- Access to reinsurance markets.

In addition to the regulations governing the establishment and operation of insurance facilities in Canada, there are also regulations governing the sale and marketing of insurance products. These regulations are designed to protect consumers and ensure that insurance products are sold fairly and transparently. Insurance brokers and agents who sell insurance products in Canada are required to be licensed and must adhere to strict rules and regulations governing their code of conduct.

Key Elements for Establishing a National Conservation Defence Insurance Facility

Any decision to proceed with the regulatory establishment of an insurance facility would first require an actuarial analysis and a business case to set out specifics related to its design. The actuarial analysis and business case would provide the information needed by the private land conservation sector to decide whether it is prepared to move forward with the regulatory establishment of an insurance facility. These documents would form the basis of the regulatory application.

An actuarial analysis is a type of asset-to-liability analysis used by financial companies to ensure they have the funds to pay the required liabilities. Insurance and retirement investment products are two common financial products in which actuarial analysis is needed. For the private land conservation sector, information on the frequency and severity of legal disputes is needed to complete an actuarial analysis. While considerable information was provided by organizations that completed the online survey or participated in virtual meetings with the CLC, additional information is needed if an actuarial analysis is to be completed. In one case, an organization noted that it is willing to share details on legal cases with the firm conducting the actuarial analysis once a non-disclosure agreement is in place.

While an actuarial analysis is needed to inform decisions on the financial parameters of an insurance facility, for example premiums, deductibles, and initial capitalization, a business case would set out other details of the operation of the insurance facility. The nature of the details that would need to be addressed in the business case are set out in the sections that follow.

As part of the research conducted by CLC, it was found that the development of an insurance facility should take into account:

- the importance of deterrence—all private land conservation organizations need to be backed by strong legal defence support.
- the vulnerability of conservation agreements—the impact of change of ownership and the organizational expertise needed to foster positive landowner relationships.
- the key elements of best management practices to prevent legal issues.
- the impact on the organization of the settlement or claims process.
- the need for knowledgeable legal professionals and a legal defense fund.
- the benefits and challenges of a collective insurance program to support all private land conservation organizations.

Overall Governance and Management

The governance and management structure of the insurance facility should be well defined and transparent. It should include a board of directors or trustees responsible for overseeing all aspects of the facility's operations including developing strategic plans, policy oversight, and monitoring premium and financial performance.

The board of directors should represent organizations of diverse sizes and geographic locations. There should be clear lines of authority and accountability, and policies and procedures should be in place to ensure compliance with all regulatory requirements. Board members will rely on the insurance facility manager for daily operations.

Coverage

The insurance facility should cover a range of expenses associated with a legal dispute to meet the needs of members, including court costs, claims settlement and other costs that may arise in a legal dispute. Typical coverage should also include fees for lawyers and experts for lawsuits and mediation, for both the enforcement and defense of conservation easements and fee-owned land. This would cover conservation organization lawyer and other fees if the organization initiates a lawsuit or is named in one. It would also cover lawyer and other expert fees for efforts to resolve cases prior to litigation. Coverage should be tailored to the specific risks faced by policyholders, and the policy wording should be clear and easy to understand. The insurance policy would define and outline what is covered along with listing what is not covered (exclusions). For example, among the 39 exclusions or risks not covered by Terraforma are risks for which commercial insurance is available.

Underwriting and Eligibility

Application and underwriting guidelines would need to be developed to ensure the agreed upon program parameters are met and provided to eligible policyholders. The underwriting process should be fair and consistent, and all applications would need to be reviewed and assessed by qualified underwriters.

The Terraforma underwriting process includes validating eligibility requirements. A sample of their existing application questions include:

- Validating the land trust is legally organized and in good standing
- Determining if the land trust tax exempt (not for profit)
- Assessing whether the land trust has a complete baseline documentation report for every conservation easement or deed restriction.
- If the land trust is insuring its fee properties, does the land trust have a complete inventory for every parcel of fee-owned land?
- Does the land trust implement a program of annual monitoring of its conservation easements or deed restrictions?
- Whether the land trust is insuring its fee properties and if the land trust regularly monitor its fee-owned land?
- Is the land trust free of any final judgment against it for fraud, misrepresentation, criminal charges, bad faith, misleading business practices or any other similar charges?
- Free from any ongoing governmental investigation or inquiry?
- Financial review whether the land trust is operating at breakeven (where income and expenses are equivalent) or does it have a plan to reach breakeven that may, among other actions, include use of reserves?
- Does the land trust have general liability insurance?
- Does the land trust have and implement a written records policy and secure recordkeeping system that preserves irreplaceable documents essential to defense and enforcement?
- Is the land trust actively building its legal defense and general stewardship reserves or other reserves that can be allocated for legal defense and stewardship, unless prohibited by state statute or regulation?

Claims and Claims Management

The claims submission process should be well-defined to ensure that claims are processed promptly and fairly. A team of qualified claims examiners would ensure that the claims management process is transparent. Policyholders should be kept informed of the status of their claims throughout the process.

The insurance facility will require a Claims Committee that comprises member representation. The Claims Committee would oversee the claims management process in collaboration with the insured private land conservation organizations. It should include lawyers appointed by the Members Committee with a range of experience in conservation and insurance, and in civil and common law.

The goal of the Claims Committee is to:

- Ensure the insurance facility has appropriate claims and operational protocols.
- Evaluate, monitor, approve and provide oversight of all member claims.
- Develop the legal strategy for the insurance facility.
- Assign outside counsel to represent the land trust (in consultation with the land trust) once the first notice of claims is submitted.

Capitalization

The insurance facility should be adequately capitalized at the onset and then during each policy renewal to meet its obligations to policyholders. The capitalization level will be determined based on an actuarial analysis of the risks assumed by the facility in accordance with the regulations of the specific jurisdiction.

The U.S. Terrafirma insurance captive was initially funded with USD \$5M in capital provided by a number of private foundations. The actuarial analysis and business case will assess and provide a recommendation on the capitalization structure that will meet the regulatory minimum requirements.

On-going Funding and Premiums

Participating members need to have access to a stable and predictable source of funding to ensure that the insurance facility can meet the obligations to policyholders over the long term. An actuarial pricing analysis will be used to assess the adequate premium rating to cover anticipated claims and other expenses. The actuarial analysis and business case will provide an outline of suggested premium funding.

Once created, Dion Strategic stated that “the insurance facility should also include a comprehensive risk management program including standards and practices. Course participation and accreditations could be structured in a manner to provide a reduction to insurance premium”.

Terrafirma is structured to provide discounts on insurance premiums if the private land conservation organization meets certain criteria. Organizations accredited by the U.S. Land Trust Accreditation Commission receive a higher discount per parcel of land insured. Non-accredited organizations receive a discount if they follow Best Practices for Risk Management as prescribed by Terrafirma:

- Every transaction is reviewed and approved by a qualified attorney prior to closing.
- A written policy on violation resolution is in place and followed.
- A written conflict of interest policy is in place and followed.
- Written criteria exist for selecting land and easement projects consistent with the land trust’s mission.
- Each project is evaluated for its performance of the land trust’s perpetual stewardship responsibilities.⁴⁸

Webinars and courses in risk management are also offered by Terrafirma and the LTA U.S., the completion of which qualifies a private land conservation organization for the risk management discount.

⁴⁸ Terrafirma, [Costs and Discounts](#)

Risk Retention and Reinsurance

The insurance facility should have a well-defined risk retention and reinsurance strategy in place to manage its exposure to losses. The level of risk retention and reinsurance should be determined based on actuarial analysis of the risks assumed by the facility. One of the benefits of developing an insurance facility is to gain access to the reinsurance market which could result in savings to the overall cost of risk.

Investments and Investment Policy

The insurance facility should follow a well-defined investment policy that is consistent with its capitalization and risk management policies of the domicile jurisdiction. Investments should be made with a focus on preserving capital and generating highest returns in a manner consistent with the facility's risk profile.

Actuarial Analysis and Business Case

An actuarial analysis and business case are the critical first steps and must be completed to set up an insurance facility. They are undertaken to determine whether a contemplated risk, such as a legal expense, is feasible for a particular organization or a group of organizations to insure and to facilitate the decision making for the optimum risk financing structure.

These reports will assess structures that will provide access to effective legal resources for the private land conservation sector to protect their lands and conservation agreements. In addition, it will be important to assess the current and future risk level facing private land conservation organizations, outline efficient ways to provide legal protection for the fee simple lands and conservation agreements, and explore the optimal insurance facility model that will meet the members' needs.

An actuarial analysis and business case are generally based on the following framework:

Data/Information Collection

Gathering data from prospective members about their specific legal dispute experiences. Some information has been gathered through the survey and interviews, however, information from more organizations is needed. This information will help to better understand experience and associated legal expenses, potential market size and growth potential.

Actuarial Analysis

Information collected will be analyzed by actuaries to determine the potential demand for legal defence insurance, the level of risk assumed by the facility, and the capitalization and pricing requirements. Information would include the basis for premiums, minimum membership level to ensure the insurance facility's viability, exclusions and the funds needed for the initial capitalization of the facility.

Business Case

The actuarial analysis would serve as a basis for the business case that outlines the potential benefits and risks of creating an insurance facility to provide legal expenses coverage. The business case is required as part of the insurance facility regulatory application in the prospective jurisdiction. It will also include an illustrative five-year financial proforma forecast with projected premiums, program expenses, cashflow analysis, return on assets, equity ratios and capitalization requirements.

The Centre for Land Conservation strongly believes that to safeguard private conservation lands in Canada, private land conservation organizations must be able to both acquire conservation lands or interests in them and have the means to operate sustainably in order to provide long-term, durable stewardship and legal protection of their properties and agreements. These are long-standing challenges for this sector, and it is time to address them.



PART SIX: CONCLUSIONS AND RECOMMENDATIONS

National Conservation Endowment Match Funding Initiative

The findings in *Forever Protected?* were reinforced through this study. There is an ongoing need to enhance the capacity of private land conservation organizations to ensure the sustainability and long-term benefits of their conservation lands and agreements and these organizations would benefit significantly from enhanced financial support for stewardship of their lands and agreements and ongoing operations.

While there is much discussion and interest in growing organizational capacity and various means to achieve this, doing so without confidence in the ability and wherewithal of organizations to maintain that capacity is an important consideration. A national conservation endowment match funding initiative would over time contribute to building and maintaining needed capacity within the sector by growing organizational endowment funds, enabling organizations to have more predictable annual operating budgets importantly and greater confidence in the sustainability of their operations. Respondents to this study showed support for a national conservation endowment match funding initiative as one means to grow endowments.

A national conservation endowment match funding initiative could help build or strengthen partnerships with other sectors to support private land conservation organizations and in so doing benefit these sectors as well. It would offer co-benefits and opportunities to key stakeholders - governments, community foundations, private foundations, and individual donors if they are more deeply engaged. A strongly supported private land conservation sector in southern Canada will:

- help governments meet local to national protection and restoration targets for biodiversity,
- deepen and expand the role of community foundations to address long-term interdependent issues related to community, ecosystem health, and climate resilience,
- extend and increase the impact of charitable foundations with mandates to support environmental protection, conservation, climate, and biodiversity action, and create efficiencies for supporting capacity building and increased financial security,
- increase and ensure the impact and security of donations from individuals over the long term, and
- enhance other fundraising activities of these organizations.

Establishing and growing endowments has the potential to enhance other fundraising activities of these organizations. One organization indicated that as much as 40% of its operating budget is devoted to activities that are difficult to fundraise for. Costs such as paying property taxes, fencing installation or repair, garbage removal and signage are of less interest to funders. Endowments that cover a portion or all of these costs will 'free up' community-based land conservation organizations to focus funding efforts on other activities of greater interest to funders such as acquiring conservation lands and restoring habitats.

Overall, a dedicated multisector effort to build the capacity of private land conservation organizations and ensure their long-term health has the potential to galvanize and accelerate action to achieve faster, better, sustainable conservation. Healthy landscapes are foundational to a nature positive, climate resilient future, and in southern Canada, private land conservation organizations have the vision, mission, and goals to be a key partner in delivering this outcome.

Recommendations

1/ Establish a national conservation endowment match funding initiative and consider specific design elements as described in Part Three of this study, particularly in relation to equitable access to funding.

2/ Fund the national conservation endowment match funding initiative with initially at least \$15 million annually to achieve investment returns that fully matched would provide 20% of organizations' operating budget after 10 years.

The CLC believes an objective for a national conservation endowment match funding initiative should be established. Although 47% of the organizations that participated in the survey have a goal of 30% - 100% of their annual operating and stewardship budget being covered by the return on long-term investments, current investments provide 10% or less of the annual budget for around 60% of these organizations. Based on the information found in Table 4, an annual investment in a national endowment initiative of \$14 million would if fully matched achieve a sector wide average of 20% of annual stewardship and operating budget being covered by returns of 5% on long-term investments after 10 years. To improve the prospect of achieving a goal of "20% in 10 years", the CLC recommends a minimum annual investment of \$15 million.

3/ Enable participation and ensure equitable access to funding by all private land conservation organizations.

As nearly 50% of organizations have not yet established an endowment fund and about 60% of organizations that participated in the survey have endowments that provide less than 10% of their annual operating budget, CLC recommends that consideration be given to facilitating participation of all private land conservation organizations.

One option would be a phased-in approach where, depending upon the circumstances of the organization, the requirement for matched funding would not apply in the initial years of a national endowment initiative. Such an approach would facilitate establishment of an endowment, particularly if the endowment is held by a community foundation as these foundations require a minimum initial investment in funds they hold. In some cases, a community foundation may contribute funds to assist in the establishment of the endowment.

Should an initiative provide funds that do not need to be matched, limits to such funding should be considered so as to not undermine the overall objective for total match over the initial 10 years, and to ensure fairness in terms of organizations that have already established endowment funds. It would be important to work with the organization to determine the level of unmatched funding that might be made available. In determining the appropriate unmatched amount, factors to consider include the funding needed to establish an agency fund with their community foundation, the amount currently held in an endowment if any, and the annual operating budget of the organization over the preceding three fiscal years.

At a program level, consideration should be given to a maximum amount available as unmatched funds and providing unmatched funds only in the initial 2 or 3 years of a national initiative so as to accelerate the establishment of endowments.

A key consideration in relation to equitable access to funding relates to the cost of stewardship of conservation lands and agreements which can vary widely depending upon the conservation property in question. In this regard, it would be beneficial to explore whether and how a framework might be established for equitably estimating stewardship costs.

4/ Ensure investment approaches adhere to recognized high standards of financial management. In this regard, consideration should be given to greater reliance on community foundations as the holder of the endowment.

If a federally funded national conservation endowment match funding initiative is to be established, the key consideration will be the security of the capital investment. This means sound investments that provide solid return on investment and assurance that the capital is protected and not available for other purposes. By example, the federally funded CCIF-EIC requires that its funds be invested directly with a community or dedicated foundation.

Community foundations (CFs) could be an important potential partner in the development, implementation, and sustainability of a national endowment match funding initiative. An examination of the proactive role CFs play within the philanthropic sector, their impact within the CCIF-EIC for the arts sector, and their potential to expand their philanthropic focus to the land conservation sector could contribute significantly to the success of a new national endowment match funding program and to the building and durability of the capacity of all private land conservation organizations.

Given that few, if any, private land conservation organizations are supported by a dedicated foundation, it will be important for a national endowment match funding initiative to acknowledge and accept the best practices in which organizations already engage for the management of their special funds. Given that 53% of survey respondents manage their investments through a special committee of the board of directors, and 42% through their financial institution, the question of how their current investments would be considered within this initiative was top of mind for many organizations that participated in this study, particularly those that retain ownership of the invested capital. Should a private land conservation organization not wish to work with a community foundation, the initiative should require, as part of the eligibility criteria, documentation of the organization's investment policy and practices and the nature of its current investments.

Recommendations 5 and 6 that follow should be taken as additional considerations for the implementation of a successful national endowment match funding initiative:

5/ Support robust marketing and communications strategies that will raise the private land conservation sector's profile.

A robust marketing and communications strategy to support the goal to increase match funding under a national initiative could contribute to its success. The strategy should consider key stakeholders, and current and potential new individual, private and public funders and donors, boosting the capacity of private land conservation organizations to raise the match funding. This could include:

- building awareness and making connections within the private foundation sector to increase their support to provide match funding - some organizations that could help with this outreach include Environmental Funders of Canada, and Philanthropic Foundations of Canada
- increasing outreach to professional advisors in the wealth investment sector to connect more Canadians with the opportunity to support private land conservation organizations
- aligning with Community Foundations of Canada to promote the benefits of partnership with a community foundation

Private land conservation organizations could benefit from recurring campaigns to help boost donor awareness of the sector, the development of shared messaging and campaign materials, and access to marketing and communications expertise. In this respect, a partnership with a community foundation would also be of benefit, as a CF can play a strong role in marketing the value of private land conservation organizations to existing and new donors.

6/ Consider reinforcing capacity building within the sector by linking eligibility to organizations that meet or are on track to meet high performance measures.

Funders of private land conservation also have an increasingly important role to play in supporting private land conservation organizations to ensure a durable standard of care and sustain the benefits of the investments in conservation that Canadian donors and funders, both private and public, are making. It is inevitable that, with the continued growth and investment in the private land conservation sector, these private and public funders will seek assurances of conservation in perpetuity and organizational long-term viability.

A national conservation endowment match funding initiative should develop performance measures that demonstrate to current and potential investors in conservation the vitality of the private land conservation sector and the sustainability of their investments. The certification program based on the Canadian Land Trust Standards and Program will be a useful independent source of information about the performance of organizations that participate in the program.

Conservation Defence Insurance

CLC found that many private conservation organizations are concerned about the challenge and cost of defending conservation lands and agreements. They are concerned about the risk of an increasing frequency of legal challenges as property values increase and as land changes hands from the original conservation agreement donor, and the implications for the sector should an organization not be able to mount a defence of its conservation lands or agreements.

There is a risk, even for the best managed organizations, that a major violation of a conservation property will be discovered or that the organization will, for example, become the defendant in litigation seeking to unravel a conservation agreement. Organizations have no way of knowing when they will need to litigate to protect a conservation agreement or conserved property, how long negotiation and litigation may take or how much it may cost. Most organizations lack funds sufficient to cover the cost of defending a conservation agreement or fee-simple land, which can be substantial particularly if well financed land developers seek to use lands for other purposes. The creation of an insurance facility to address this exposure minimizes these risks and uncertainties by reducing an organization's exposure to potentially high legal costs and fees.

Private land conservation organizations hold more than \$2.6 billion in assets, including a conservation estate either in fee simple ownership or as conservation agreements. Additionally, tens of millions of dollars are raised annually for conservation and millions more in tax receipts are issued for ecological gifts. It is important to ensure that the organizations managing this conservation estate are sufficiently supported to sustainably manage and protect this conservation estate.

Since the establishment of CLC, and as reinforced through *Forever Protected?* and this study, private land conservation organizations have consistently identified the need to be better prepared to manage legal disputes, a risk that they believe is growing.

Recommendations

7/ Complete an actuarial analysis and the business case to enable a decision on whether to proceed with the creation of a conservation defence insurance reciprocal facility

The information needed to enable a decision on proceeding with the establishment of a conservation defence insurance facility depends on the completion of an actuarial analysis and a business case, the details of which are described above. In particular, information is required on the frequency and severity of legal issues encountered in defending and protecting conservation lands and agreements from harm. While illustrative information on specific legal issues was obtained over the course of this study, more specific details are needed if an actuarial analysis and associated business case are to be completed.

Once an actuarial analysis and business case are available, private land conservation organizations will have the information needed to decide whether to proceed with the regulatory establishment of a conservation defence insurance facility.

8/ Ensure private land conservation organizations have access to risk management information and training

Due diligence on the part of a private land conservation organization can play a key role in reducing the likelihood of a legal issue arising in the first instance and increase the probability of success should a legal dispute arise. The Terrafirma Risk Retention Group LLC which provides conservation defence insurance for land trusts in the United States places considerable importance on supporting its members to effectively manage risks.

Even in the absence of conservation defence insurance, the private land trust sector can put in place additional resource materials and training that would support effective legal risk management. Information provided by the three provincial land trust alliances supports efforts by their members to effectively manage risks.

The following two recommendations depend upon completion of an actuarial analysis and business case and a decision by private land conservation organizations to move forward with regulatory establishment of an insurance reciprocal.

9/ Establish a strategic project team to secure commitments, and to create and implement a conservation defence insurance facility

A strategic process team of selected private land conservation organizations will need to be established to guide the process of securing a commitment from private conservation organizations. Based on the actuarial analysis and business case, a minimum number of organizations committing to be members will be needed to make the facility successful. Reaching this minimum threshold is required prior to initiating the regulatory process to establish a conservation defence insurance facility.

Should the minimum participation threshold be reached, the strategic project team could initiate the creation and implementation of the conservation defence insurance facility. It would manage the regulatory application process, establish the governance structure, and make any further decisions needed about the insurance facility's operation.

10/ Ensure the initial capitalization of an insurance facility is sufficiently large to incentivize organizations to become members

Although an actuarial analysis and business case for a conservation defence insurance facility in Canada remain outstanding, it is possible to set out considerations with respect to the initial capitalization of such a facility. To satisfy regulatory requirements, the initial capitalization will need to ensure that the insurance facility has sufficient resources to cover potentially significant claims in the early years of the facility. The initial capitalization should also establish an endowment to provide for all or some of the ongoing cost to administer the insurance facility. Ideally, such an endowment would facilitate membership by generating a return on investment this is also able offset a portion of the annual premium.

ANNEXES

Annex 1: About the Private Land Conservation Sector

The private land conservation sector is relatively small. Data sourced from the Canada Revenue Agency (CRA) for 2021 shows the sector included 157 charitable organizations. In total, it then held over \$2.6 billion in assets, generated over \$502 million in revenue, and issued over \$116 million in tax receipts. It employed 1,443 full-time and 1,046 part-time or seasonal employees.

Table 10: 2021 organizations and ranges of total revenue

# of orgs	Range of total revenue
9	No information
42	< \$100,000
20	\$100,000 - \$300,000
21	\$300,000 - \$500,000
17	\$500,000 - \$1,000,000
34	\$1,000,000 - \$5,000,000
11	\$5,000,000 - \$20,000,000
1	\$20,000,000 - \$60,000,000
2	> \$100,000,000

Source: Canada Revenue Agency

The Centre for Land Conservations report *Forever Protected?* highlighted the relatively low levels of funding the environmental charitable sector receives overall compared to other charitable sectors. Private land conservation organizations represent under one percent of Canadian charities in total. In 2021 27% reported less than \$100,000 in total annual revenue, 27% reporting between \$100,000-\$500,000, 11% between \$500,000 to \$1 million, 22% between \$1-\$5 million and 8% over \$5 million (Table 10).⁴⁹

conservation organizations are found in Quebec, Ontario and British Columbia. A comparison of the data provided to the CRA by the sector in 2018 and 2021 showed an overall increase, with 13 more charitable organizations reporting in 2021.

The largest increase was in Quebec, followed by British Columbia (Table 11).

As the number of organizations reporting to the CRA database increased overall, so did the total value of assets held by 13%, annual revenue by 27% and tax receipts issued by 35%. Full and part-time/seasonal employees increased by 9% and 24% respectively.

Across Canada, 83% of private land

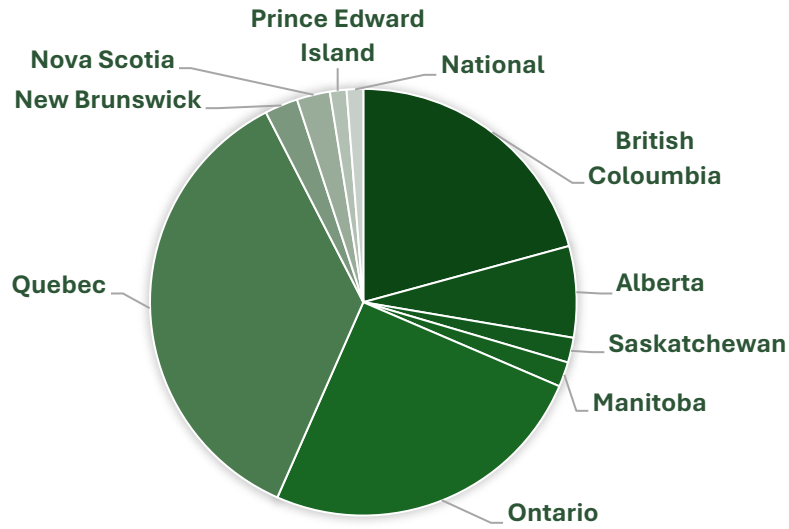
Table 11: Change in # of private land conservation organizations, 2018 & 2021

Province	# of Orgs 2018	# of Orgs 2021	% of 2021
British Columbia	28	33	0.21
Alberta	9	9	0.06
Saskatchewan	3	3	0.02
Manitoba	2	3	0.02
Ontario	39	39	0.25
Quebec	48	57	0.36
New Brunswick	5	4	0.03
Nova Scotia	5	5	0.03
Prince Edward Island	3	2	0.01
National	2	2	0.01
TOTAL	144	157	

Source: Canada Revenue Agency 2018 and 2021

⁴⁹ <https://centreforlandconservation.org/uploads/632cc1471c868.pdf>

Figure 6: Private Land Conservation Organizations by Province



Source: Canada Revenue Agency

Table 12: Comparison between 2018 and 2021

	2018	2021	% change
# of organizations	144	157	9%
Full-time employees	1325	1443	9%
Part-time or seasonal employees	843	1046	24%
Total value of assets held by land trusts	\$2.3 billion	\$2.6 billion	13%
Total annual revenue	\$395 million	\$502 million	27%
Total value of tax receipts issued	\$86 million	\$116 million	35%

Source: Canada Revenue Agency 2018 and 2021



Source: Legal Defence for Private Land Conservation Organizations Survey, Centre for Land Conservation 2023

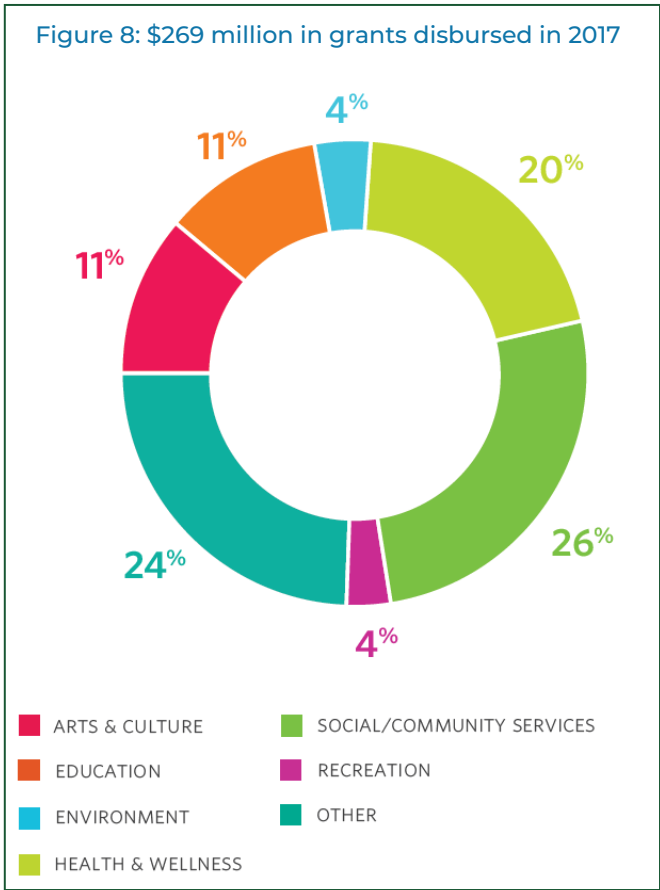
Annex 2: Other Information About Community Foundations

Increasing Focus on Environmental Priorities by Community Foundations

In November 2021, the Community Foundations of Canada (CFC) joined Environment Funders Canada, Philanthropic Foundations Canada, and The Circle on Philanthropy to establish the Canadian Philanthropy Commitment on Climate Change (CPCCC), which “calls on all funders in this land, regardless of their mission, to come together and commit to act on climate change.”⁵⁰ Currently, 48 philanthropic organizations in Canada have signed this pledge.⁵¹

The CFC has since established a community foundation learning cohort running from September 2022 to September 2024. The Communities for Climate Resilience Cohort is currently supporting 22 community foundation leaders “to learn and receive support from peers, explore new approaches to grantmaking, governance, and investment policies to take action on the climate crisis.”⁵²

The mission of the new Collective Fund for climate and ecological transition, for example, with the Foundation of Greater Montreal is “to accelerate the fight against climate change, adaptation and resilience, as well as the ecological transition in Greater Montreal. By bringing together the philanthropic resources of the metropolitan region, we will be able to increase the funding available for structuring and innovative initiatives, particularly in the fight against climate change, greening and the protection of natural environments.”⁵³



Source: [Community Foudations Canada](#)

50 <https://philanthropyforclimate.ca/>

51 <https://philanthropyforclimate.ca/wp-content/uploads/2023/12/CPCCC-Report-ENGLISH.pdf>

52 <https://communityfoundations.ca/wp-content/uploads/2019/04/EN-Climate-Resilience-Cohort-Invitation-and-FAQ-1.pdf>

53 <https://www.jedonneenligne.org/fgm/730007/?lng=1>

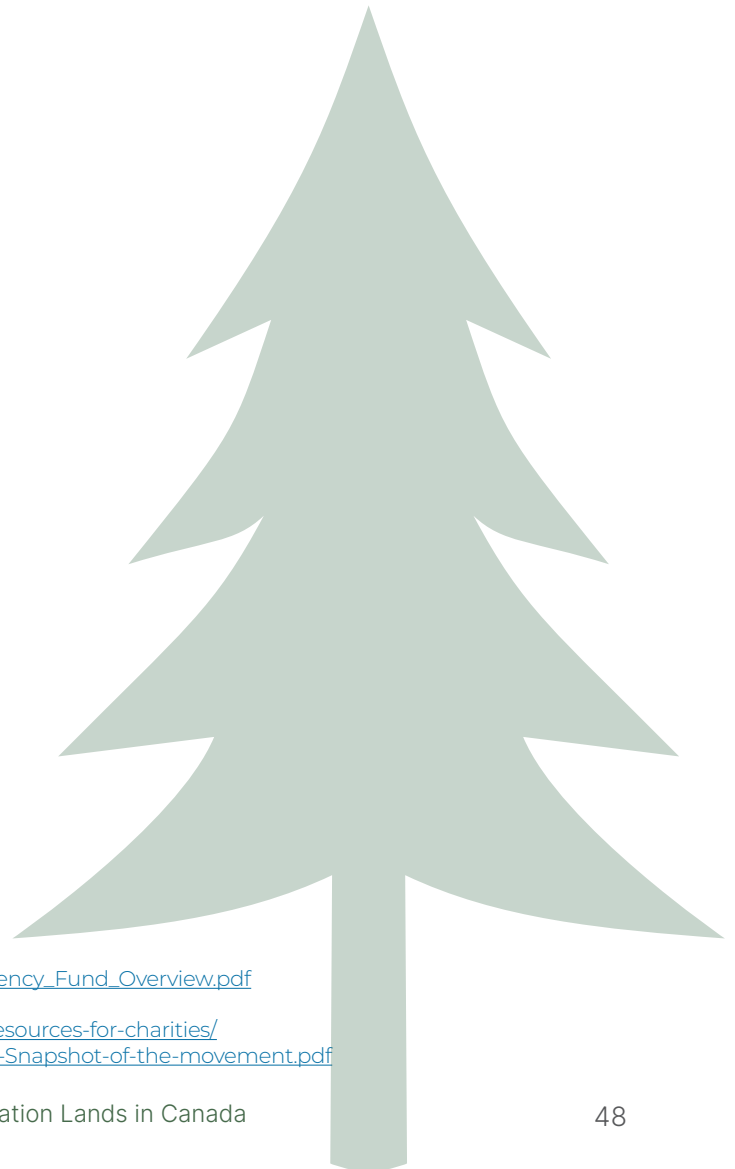
Starting an Agency Fund

To start an agency fund, many CFs recommend a minimum investment as low as \$5,000. The Winnipeg Foundation, for example, requires \$20,000 and after the first fund is established, the agency can add sub funds with a minimum of \$10,000.⁵⁴ The Winnipeg Foundation also offers a matching grants program to support organizations grow their agency funds. It matches a new fund of \$20,000 with a gift of \$15,000 and continues to match on a changing ratio as the fund grows. The next \$75,000 is matched \$1 to every \$5 raised to a cap of \$15,000, the next \$270,000 is matched \$1 to \$9 for a total match of \$30,000. Once the fund reaches \$2.7 million from additional funds raised, the Winnipeg Foundation matches \$1 to every \$9 to a total of \$300,000.⁵⁵

A flow-through fund, or non-permanent fund, is another opportunity for registered charities. This type of fund generates an income stream and permits the charity to “make requests to access all or part of the fund’s capital to support future organizational needs. There are holding and notification periods to consider.”⁵⁶ At the Vancouver Foundation, for example, the minimum initiating capital commitment required to establish a non-permanent fund is \$100,000.

Grants Disbursed by Community Foundations

In the 2017 Snapshot of Canada’s Community Foundation Movement⁵⁷, the breakdown of \$269 million in grants disbursed showed 4% going to Environment, compared to 11% to Arts and Culture, and 26% to Social/Community Services.



⁵⁴ https://www.wpgfdn.org/wp-content/uploads/2023/01/Agency_-_Agency_Fund_Overview.pdf

⁵⁵ Ibid

⁵⁶ <https://www.vancouverfoundation.ca/donors-advisors/for-charities/resources-for-charities/>

⁵⁷ <https://communityfoundations.ca/wp-content/uploads/2019/05/2017-Snapshot-of-the-movement.pdf>



Centre for Land Conservation

Centre pour la conservation des terres