



Land Trusts: A Citizen's Tool for Conservation

A Provincial Teleconference on Food Security & Policy



Hosted by the Food Security Network NL

Agenda

12:00 – 12:05

Welcome & Introductions

12:05 – 12:10

Introduction to FSN & Food Security in NL

12:10 – 12:30

Keynote Speaker:
Aaron Felt: Land Trusts

12:30 – 1:00

Discussion & Questions

Food Security Network NL

Our Five Priorities

1. Networking & Information Sharing
2. Public Awareness & Education
3. Partnerships
4. Catalyst of & Support for Food Security Initiatives
5. Research

“Actively Promoting comprehensive, community-based solutions to ensure physical and economic access to adequate and healthy food for all.”

Land Trusts In Newfoundland

A Citizen's Tool for Conservation

What is a Trust?

- Oosterhoff On Trusts (6th Ed):
 - A trust is an equitable obligation, binding a person (who is called a trustee) to deal with property over which s/he has control (which is called the trust property), for the benefit of persons (who are called the beneficiaries), of whom s/he may himself be one, and any one of whom may enforce the obligation.
- Translated from Lawyer-speak:
 - A trust is a legal entity that owns and manages property for the benefit of other parties, as defined by the terms of the trust.

Trusts: Terms

- **Settlor/Testator:** The person who creates the trust.
 - The Settlor generally provides the trust property.
- **The Trustee:** The person who holds the title to the trust property for the benefit of the beneficiaries.
 - There may be more than one trustee.
 - The settlor and trustee may be the same person, (i.e. where the settlor declares him/herself to be a trustee of property for the benefit of others).

Trusts: Terms (ctd.)

- **Beneficiary:** The person(s) for whose benefit the trustee holds the property.
 - The trustee can be one of multiple beneficiaries, but not the sole beneficiary.
- **Trust Property:** The property which the trustee holds for the benefit of the beneficiaries (usually taking the form of financial assets).

Trusts: Terms (ctd.)

- The Trust Instrument: A foundational document which vests the trust property with the trustee and describes the rights and obligations of the parties to the trust (the terms of the trust).
 - “Conservation agreements” are included as part of the trust instrument.
 - Land trusts will usually include a Baseline Documentation Report (BDR) re the property in question as part of their trust instrument.

Types of Trusts:

- Trusts for persons (e.g. a college fund for your children).
- Trusts for purposes.
 - Charitable Trust (Statute of Elizabeth).
 - Non-Charitable Trust.

Who can be a trustee?

- Any legal adult.
- An NGO (charitable or otherwise).
- A for-profit corporation.
- You!

Canadian Land Trust Alliance (CLTA)

- The CLTA is an umbrella organization that facilitates communication and co-operation between different land trusts across Canada.
 - www.clta.ca
- Most provinces have a provincial land trust alliance that acts as a conduit between the CLTA and individual land trusts.
- The CLTA provides excellent resource material on trust management and land maintenance, including the CLTA Standards and Practices Guide.

CLTA (ctd.)

- There are over 100 land trusts in Canada, holding title to over 2000 individual pieces of property.
- Land trusts vary dramatically in size, number of properties held, and size of properties held.
- All the provinces of Canada make heavy use of them, except Newfoundland & Labrador.

Land Trusts In Newfoundland & Labrador

- The Nature Conservancy of Canada appears to operate the only property holding land trust in Newfoundland & Labrador.
 - (As far as I know Ducks Unlimited does not hold title to any land in our province).

Land Trusts In Newfoundland & Labrador

- Possible Reasons why Newfoundland is out-of-step with Canada:
 - Our legislature is often behind the curve when it comes to implementing standardized statutory regimes.
 - Our small population historically saw little development outside the Avalon Peninsula and thus, until recently, placed comparatively less stress on fragile eco-systems in our province.
 - A political culture that was focused on the sea, not the land.

Keys to Developing A Successful Land Trust

1. A Land Securement Strategy.
2. A skilled BDR team.
3. A long-term strategy for funding the trust and its conservation activities.
4. A competent and motivated board of directors.
5. A responsible and accountable volunteer team.

A Land Securement Strategy

- Really, this is just a jargoned way of saying “a plan to acquire land for conservation purposes” in a given area.
- A land securement strategy:
 - Prioritizes possible land for conservation.
 - Identifies stakeholders with a present legal interest in the land, and the circumstances under which they would be willing to work towards conservation goals.
 - Identifies the other parties in a region that could be mobilized for or against conservation.
 - Identifies an appropriate method for acquiring the land (grant, eco-gift, sale, easement, etc).
 - Provides a mechanism for community consultation.

Baseline Documentation Report (BDR)

- BDRs are used to document the natural characteristics of a piece of land at the outset of conservation efforts. They often form the evidence on which conservation agreements are fashioned.
- BDRs are incredibly valuable for long term monitoring and enforcement of conservation obligations.
- BDRs are usually required where a donor wishes to make use of the Federal Eco-gifts program.
- The CLTA Standards and Practices guide provides a working framework for developing effective BDRs.

Conservation Easements

- A statutory modification of the common law that allows Land Trusts to enforce conservation obligations on land they do not own.
- Conservation Agreements carve out an exception to the common law rule against perpetuities.
- Presently, only available for built heritage in Newfoundland & Labrador (see: Heritage Foundation of Newfoundland & Labrador).

Conservation Easements

- Conservation Easements are most commonly used on conservation worthy land with high development potential.
- They allow land to be developed, but require all future title holders to abide by clearly articulated restrictions enforced by the land trust.
 - E.g. requiring an outdoor mall to maintain walking trails and an adjacent stream.

Conservation Easements

- Conservation Easements are NOT appropriate if:
 - The eco-system is fragile.
 - There is no economic incentive to develop the land.
 - Public access to the land is needed.
 - Receiving the land as a donation is still a viable option.

Eco-Gifts

- The Ecological Gifts Program (EGP).
 - A federal program that provides income tax incentives to private and corporate land owners who donate ecologically sensitive lands (or partial interests in those lands) to qualified recipient organizations, federal/provincial/territorial/municipal government, or public bodies.

Eco-Gifts (ctd.)

- Until 2000, land that was donated for conservation purposes was still taxed as a regular land transaction!
- The Federal government has since decided that land conservation is important enough a goal that it is worth forsaking tax revenue.

Eco-Gifts: Federal Certification Criteria

- Areas Identified, designated or protected by a local, provincial, territorial, national or international body as ecologically significant.
- Natural Spaces significant to the local environment.
- Sites with significant current ecological value, or potential for enhanced ecological value due to proximity to other significant sites.

Eco-Gifts: Federal Certification Criteria (ctd.)

- Natural buffers around environmentally sensitive areas such as water bodies, streams or wetlands.
- Unique or rare habitats
- All areas must be subject to a thorough BDR.

What Next?

- Start a trust!
- Identify lands for conservation purposes.
- Make the absence of land trusts in this province a political issue.
- Lobby for conservation easement legislation.
- Get a rich friend with too much land and not enough tax breaks, then tell them about the federal eco-gifts program.