

Conservation Easements Act

CHAPTER 28

OF THE

ACTS OF 2001

amended 2012, c. 18

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An Act Respecting Conservation Easements Short Title

1 This Act may be cited as the Conservation Easements Act. 2001, c. 28, s. 1 .

Interpretation

2 (1) In this Act,

- (a) "conservation easement" means a conservation easement within the meaning of Section 4;
- (b) "easement holder" means an eligible body that is entitled, from time to time, to enforce the rights and privileges over land contained in a conservation easement;
- (c) "eligible body" means a body that is, under Section 8, eligible to be an easement holder;
- (d) "former Act" means Chapter 2 of the Acts of 1992, the Conservation Easements Act;
- (e) "Minister" means the Minister of Natural Resources;
- (ea) "municipality" means a regional municipality, municipal unit or village as defined by the Municipal Government Act;
- (f) "owner" means the owner of land over which a conservation easement is granted, and includes any heirs, executors, administrators, successors or assigns of the grantor of the conservation easement, any person who becomes the owner or occupier of the land after the conservation easement is created and, for greater certainty, Her Majesty in right of the Province, Her Majesty in right of Canada or a municipality.

(2) and (3) repealed 2012, c. 18, s. 1.

2001, c. 28, s. 2; 2012, c. 18, s. 1.

Application of Act

3 (1) This Act and the regulations bind Her Majesty in right of the Province and Her Majesty's corporations, boards, commissions, agents, administrators, servants and employees.

(2) This Act binds Her Majesty in right of Canada and Her Majesty's corporations, boards, commissions, agents, administrators, servants and employees.

(3) For greater certainty, the persons referred to in subsections (1) and (2) are subject to an order and other remedies pursuant to this Act and the regulations.

(4) This Act applies with respect to an easement or covenant entered into pursuant to the former Act and in effect immediately before the coming into force of this Act as if the easement or covenant were a conservation easement within the meaning of this Act.

(5) Nothing in this Act affects a right or a remedy with respect to an easement under any other Act or under the common law or equity if that right or remedy is not inconsistent with any right or remedy under this Act.

(6) An interest in real property in existence at the time a conservation easement is created is not affected by the conservation easement unless the owner of the interest is a party to the conservation easement or consents to it.

(7) This Act does not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity. 2001, c. 28, s. 3; 2012, c. 18, s. 2.

Nature and purpose of conservation easement

4 A conservation easement is an agreement entered into between an owner and an eligible body that

(a) grants rights and privileges to the easement holder over the owner's land that relate to the purposes for which the conservation easement is granted;

(b) may impose obligations, either positive or negative, on the owner or the easement holder, or both, respecting the owner's land that relate to the purposes for which the conservation easement is granted; and

(c) is made for the purpose of protecting, restoring or enhancing land primarily dedicated for the protection of biodiversity and natural processes that

(i) contains natural ecosystems or constitutes the habitat of rare, threatened or endangered plant or animal species,

(ii) contains outstanding botanical, zoological, geological or morphological features,

(iii) exhibits exceptional and diversified scenery,

(iv) provides a haven for concentrations of birds and animals,

(v) provides opportunities for scientific or educational programs in aspects of the natural environment,

(vi) is representative of the ecosystems, landforms or landscapes of the Province, or

(vii) meets any other purpose prescribed by the regulations.

2001, c. 28, s. 4; 2012, c. 18, s. 3 .

Duration of conservation easement

5 (1) A conservation easement may exist for a stated period or in perpetuity.

(2) An easement holder may not, by possession, occupation or use of an owner's land, whether in accordance with the terms of the conservation easement or otherwise, obtain any possessory or prescriptive title in or to the land.

(3) An owner is not liable for a breach of a conservation easement that occurs after the owner ceases to own the land. 2001, c. 28, s. 5; 2012, c. 18, s. 4 .

Conservation easement runs with land

6 Subject to this Act, a conservation easement, whether positive or negative in nature, runs with the land to which it relates for the period, if any, set out in the conservation easement even though the easement holder owns no other land that would be accommodated or benefited by the conservation easement. 2001, c. 28, s. 6 .

Contents of conservation easement

7 A conservation easement shall contain

- (a) the names and mailing addresses of the parties to the conservation easement;
- (b) the unique parcel identification number that is assigned to a parcel by Service Nova Scotia and Municipal Relations and, for parcels that are not land registered, a metes and bounds description of the land to which the conservation easement applies;
- (c) a sketch or plan that depicts the land to which the conservation easement relates and, where the conservation easement applies to only a portion of the parcel, a drawing showing the location of the conservation easement on the parcel;
- (d) where the conservation easement does not exist in perpetuity, the period for which the conservation easement is to exist;
- (e) the specific purpose for which the conservation easement is granted;
- (f) the practices permitted, restricted or prohibited on the land to which the conservation easement relates and a description of those practices;
- (g) the conservation, restoration or enhancement practices that may be undertaken by the easement holder; and
- (h) any other information prescribed by the regulations. 2001, c. 28, s. 7; 2012, c. 18, s. 5.

Eligible bodies

8 Any of the following bodies is eligible to hold a conservation easement:

- (a) Her Majesty in right of the Province or any agency of Her Majesty in right of the Province;
- (b) Her Majesty in right of Canada or any agency of Her Majesty in right of Canada;
- (c) a municipality or any agency of a municipality;
- (ca) any of the thirteen Nova Scotia Mi'kmaw bands or any legal organization representing two or more of the bands;
- (d) any organization that was, immediately before this Act comes into force, designated by the Governor in Council as a conservation organization under the former Act;
- (e) any other organization designated pursuant to the regulations. 2001, c. 28, s. 8; 2012, c. 18, s. 6 .

Amendment of conservation easement

9 A conservation easement may be amended by written agreement between the owner and the easement holder if the amendment supports or enhances the stated purpose of the conservation easement. 2001, c. 28, s. 9; 2012, c. 18, s. 7 .

Assignment of conservation easement

10 A conservation easement may, subject to any terms in the conservation easement, be assigned by the easement holder in writing to any eligible body. 2001, c. 28, s. 10; 2012, c. 18, s. 8 .

Filing of conservation easement

11 (1) The easement holder shall submit the conservation easement and any amendment or assignment of it for filing with the appropriate registry of deeds and shall, within thirty days after filing, forward a copy of the conservation easement, amendment or assignment to the Minister.

(2) A conservation easement does not create an interest in land until the conservation easement is filed pursuant to the Registry Act or the Land Registration Act. 2012, c. 18, s. 9 .

Conservation easement does not lapse

12 A conservation easement does not lapse by reason only of

(a) non-enforcement;

(b) the use of the land to which the easement relates for a purpose that is inconsistent with the purposes of the easement; or

(c) a change in the use of land that surrounds or is adjacent to the land to which the easement relates. 2001, c. 28, s. 12 .

Termination or assumption of conservation easement

13 (1) A conservation easement may be terminated by a written agreement between the easement holder and the owner.

(2) Where a written agreement is made pursuant to subsection (1), the easement holder shall, within ninety days of the date of the agreement, file a copy of the agreement with the appropriate registry of deeds and send a copy to the Minister.

(3) repealed 2012, c. 18, s. 10.

(4) Where an easement holder ceases to exist, the owner shall notify the Minister in writing that the easement holder no longer exists and the Minister shall, within ninety days of receiving the notice, send a copy of the notice to all the eligible bodies.

(5) Within ninety days after the notice from the Minister has been sent to the eligible bodies pursuant to subsection (4), any eligible body may notify the Minister in writing of its intention to elect to assume the obligations of the easement holder referred to in the notice and accept the rights and privileges respecting the conservation easement.

(6) Where more than one eligible body notifies the Minister pursuant to subsection (5), the Minister shall determine which eligible body will be permitted to assume the obligations of the easement holder referred to in the notice and accept the rights and privileges respecting the conservation easement.

(6A) The Minister shall notify the eligible body that is permitted to assume the rights, privileges and obligations of the easement holder pursuant to subsection (5) or (6), and the eligible body shall send the owner a written notice advising the owner of the assumption of obligations, rights and privileges.

(6B) Where no eligible body notifies the Minister of its intention to assume the obligations of an easement holder that has ceased to exist, the Minister may elect to assume the obligations of the easement holder and

accept the rights and privileges respecting the conservation easement by giving the owner a written notice advising of the election within one hundred and eighty days after the Minister has sent the notices to the eligible bodies pursuant to subsection (4).

(7) A written notice referred to in subsection (5) or (6) shall be registered in the appropriate registry of deeds.

(8) Where neither the Minister nor an eligible body elects to assume the obligations of the easement holder, the conservation easement is terminated and the Minister shall file a notice of termination in the appropriate registry of deeds and provide a copy of the notice to the owner. 2001, c. 28, s. 13; 2012, c. 18, s. 10 .

Easement holder no longer eligible body

14 Where an easement holder ceases to be an eligible body, the easement holder is deemed to have ceased to exist for all purposes of Section 13. 2001, c. 28, s. 14 .

Enforcement by action in Supreme Court

15 (1) The obligations in a conservation easement, whether positive or negative, may be enforced by an action in the Supreme Court of Nova Scotia by the owner or the easement holder.

(2) In an action pursuant to subsection (1), the Supreme Court of Nova Scotia may

(a) grant any relief or remedy available at common law to any of the parties referred to in subsection (1);

(b) order the defendant to take any action the Court considers appropriate to restore or remedy any harm to the land to which the conservation easement relates;

(c) prohibit any activity on the land to which the conservation easement relates that the Court considers contrary to any of the purposes of the conservation easement. 2001, c. 28, s. 15 .

Regulations

16 (1) The Governor in Council may make regulations

(a) prescribing purposes for which a conservation easement may be granted;

(b) designating organizations for the purpose of clause 8(e);

(c) respecting the information that must be included in a conservation easement;

(d) defining any word or expression used in but not defined in this Act;

(e) respecting any matter or thing the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the Regulations Act. 2001, c. 28, s. 16 .

Former Act

17 (1) The former Act is repealed.

(2) Nothing in subsection (1) prevents the Governor in Council from revoking a designation of an organization as a designated conservation organization pursuant to the former Act. 2001, c. 28, s. 17.

Proclamation

18 This Act comes into force on such day as the Governor in Council orders and declares by proclamation. 2001, c. 28, s. 18.

Proclaimed - January 18, 2002

In force - January 18, 2002

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