

Conservation Easements as Ecological Gifts

An ecological gift of a conservation easement allows landowners to protect the ecologically sensitive features of their property in perpetuity, retain title, and be eligible for enhanced income tax benefits.

Conservation easements are legally binding instruments whereby the landowner transfers specific rights, such as the ability to create building lots or cut trees, to an easement holder (usually a nature conservation organization or agency). Depending on the terms of the conservation easement agreement, the easement holder has the right and responsibility to inspect the property and ensure the terms of the conservation easement are being respected.

An easement donated on a voluntary basis may qualify as an ecological gift under the *Income Tax Act* of

Canada, allowing corporate or individual donors to obtain an official donation receipt and claim an enhanced tax benefit.

A conservation easement donated as an ecological gift must be publicly recorded, attached to the title of the property, and must be made in perpetuity. As a result, all future landowners are bound to its terms. Current and subsequent landowners are free to sell or otherwise transfer title to the land. Yet the conservation easement is still held by the conservation organization and the land continues to be subject to the conditions of the conservation easement.

For ecological gifts, unauthorized dispositions of title by the holder (including re-assignment of easements) or changes in land use may subject the holder to a substantial tax. Only the federal Minister of the Environment (Environment Canada) may approve such changes or dispositions.

All ecological gift conservation easement donations to date in Ontario have been written under one of two provincial statutes.

- Ontario's *Conservation Land Act* provides for landowners to enter into agreements which grant easements and specify covenants with conservation

bodies for conservation, maintenance, restoration or enhancement of the land or of the wildlife on the land, or for access to the land for these purposes. Many refer to these agreements as conservation easements.

- The *Ontario Heritage Act* provides for the Ontario Heritage Foundation to hold easements and covenants for a variety of purposes relating to Ontario's heritage, including natural heritage.

Monitoring and Stewardship

It is important that conservation easements are monitored. For example, the Ontario Region of the Nature Conservancy of Canada (NCC) ensures that its easement lands are visited at least once a year. In some cases NCC actively works with the landholder to manage the property, such as the savanna restoration it undertook with the Savannah Links Golf Course in Cambridge.



Wood Ducks, Eric Dresser



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Conservation Options - Conservation Easements



Lorne and Rhoda Almack

Granting a conservation easement was the right decision for protecting the woods, meadows and streams on Lorne and Rhoda's property on the Oak Ridges Moraine. "The easement allowed me to do what I wanted in terms of allowed uses," Lorne explains. "If someone else wants to buy the property, they can keep some horses and pursue some farming but cannot develop the land – no housing, golf course or severances."

The Almack's easement is typical – other covenants commonly used in easement agreements include no drainage of wetlands, no cutting of trees or no aggregate extraction. The Almack's also received an income tax benefit – ecological gift donations made on or after May 2, 2006 will no longer be subject to tax on any capital gains accruing in respect of the property.

Important Components of a Conservation Easement

The Covenants

The covenants address the rights the landowner is giving up. Covenants are usually negative – they do not allow particular activities or land uses that may impair natural processes and attributes. Yet, covenants can also allow activities such as responsible forestry, usually according to a named set of practices or a management plan attached to the easement.

The Easement

The easement portion of the agreement grants to the holder, among other things, access for the purpose of inspecting the property and the right to take action to remedy any deficiencies. It usually outlines terms such as giving notice of inspection to the landowner. Under the provincial Acts the easement holder need not own adjacent land.

Covenants are not standardized under the *Conservation Land Act*. The intent is that they should conserve the natural attributes of the property. With that in mind, the landowner and potential easement holder can negotiate a variety of covenants.

However, it is advisable to include only covenants that address major threats to the natural integrity of the land and which, realistically, can be enforced and monitored.

Land Value

When the uses associated with a property are restricted, its fair market value usually declines. The amount that the land's value declines varies depending on factors such as the development potential of the land and the nature of restrictions imposed by the conservation easement. For example, a conservation easement that does not allow creation of building lots will generally have a great impact on the fair market value of a residentially zoned property adjacent to a major urban centre. The same easement may have less impact on the value of a rural or wilderness property that is less likely to be developed in the foreseeable future.

Just outside of Toronto granting conservation easements on lands with high development potential has resulted in substantial income tax benefits for many landowners. Donors who restrict or eliminate development through easements have in many cases received donation receipts ranging from 30 to 80 percent of the unencumbered value of their property.

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Generally, the difference in value of the property before and after a conservation easement is the value of the donation receipt to which the landowner is entitled. In some cases, the decline in value of the land can result in a lowered municipal property tax assessment; but this is a matter the donor must pursue with property tax officials on an individual basis.



Red-shouldered Hawk, John Mitchell

Ecological Gifts Program

Donors of land, or an interest in land (such as conservation easements) that are certified as ecological gifts can receive substantial income tax benefits. To certify a donation as an ecogift the ecological sensitivity of the land and the fair market value of the donation must be certified by the Minister of the Environment (Environment Canada). In the case of charities, Environment Canada must also qualify them to receive ecogifts.

The Program works – the majority of conservation easements in Ontario have been given as ecological gifts.

A Great Opportunity, A Great Responsibility

Conservation easements allow landowners to continue to use their land and retain some control over it. Conservation easements allow conservation organizations to secure land that they may not be able to purchase or lands with multiple uses that would not be suitable to own and manage. However, registering a conservation easement is only a beginning.

The landowner must abide by the terms of the conservation easement and the holder must demonstrate annually their interest in the land, monitor the land to ensure the landowner is complying with the covenants, communicate with subsequent landowners, and must be prepared to take action in the event of non-compliance. A well-written conservation easement agreement should describe the steps to be taken to remedy problems and define the roles of the easement holder and landowner in mediation. Occasionally arbitration or legal action may be required as a resolution when other means have failed.

Brian and Jane Buckles

In 2001 the Buckles donated a conservation easement on their 40 hectare property to the Toronto and Region Conservation Authority (TRCA). At the Buckles' request, the covenants within the agreement severely restrict the Buckles, and subsequent owners of the land, from activities that include creating building lots, constructing new buildings, and water taking; while allowing uses such as selective tree cutting and maple sap collection. The easement allows TRCA to inspect the lands to ensure compliance and outlines how instances of non-compliance are to be handled.

Brian and Jane can continue to live on their land and are free to sell it, illustrating the advantage of conservation easements, which allow landowners to enter into an arrangement to ensure their land's natural features are conserved without relinquishing full title to their property.



Courtesy of Brian and Jane Buckles

Not all easements and common law covenants qualify as ecological gifts. For a donation of a conservation easement, common-law covenant or full title to be an ecogift Environment Canada must certify that the land is ecologically sensitive and certify the fair market value of the donation.

If the donation is made to a charity, it must be eligible to accept ecological gifts – not all bodies that can hold conservation easements under the *Conservation Land Act* are eligible ecological gift recipients. Ecological gift recipients may include the federal or provincial crown, municipalities and eligible charities. See the Ecological Gifts Program Website for a list of charities that are already qualified.

Donors are strongly encouraged to obtain professional, independent legal and tax advice regarding all aspects of their donation.

NOTE: 'Gifts' do not include conservation easements granted in order to obtain an approval, such as granting an easement as a requirement of a plan of subdivision. Donors and recipients should consult their legal advisors or the Canada Revenue Agency for the definition of a gift for income tax purposes.

For more information on conservation easements, ecological gifts or environmentally sensitive land donation in general contact:

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Fowler's Toad, John Mitchell

Other References:

Canada Revenue Agency.
Gifts and Income Tax.
(Canada Revenue Agency,
Publication 113, 23 pp.)

To order call
1-800-959-2221 or visit the
CRA Website:
www.cra-arc.gc.ca/

To view amendments to
the Province of Ontario,
Conservation Land Act, visit
www.e-laws.gov.on.ca