

## A Donor's Checklist

### Protecting Your Land Forever

More and more landowners are interested in finding ways to permanently protect their lands for nature conservation purposes. A growing number of conservation organizations are available to help landowners find ways to accomplish this. Tools such as conservation easements and split receipting (partial donations) are now available to give landowners more options. Conservation easements offer long-term protection for natural features through controls on land use, without transferring ownership.

*This brochure provides a partial list of considerations, steps and tips for landowners considering making donations for nature conservation purposes.*

### Initial Considerations

Making a donation of land or a conservation agreement involves two partners: the donor and the recipient organization. Choosing an appropriate partner is a key step in the process. Some of the questions landowners should ask in seeking out a recipient organization to partner with include:

- Is the organization a registered charity or a government body that can issue charitable donation receipts for income tax purposes? Are they, or can they become, qualified to receive donations of ecological gifts (if applicable)?
- Do I have confidence in the organization and share its values?
- Does the organization have the capacity to care for the land in perpetuity? For example, are there endowment funds or other arrangements in place to pay future management costs? Some recipient organizations partner together to enhance their capacity and provide additional assurance of long-term protection.
- Does the organization follow good land and organizational management practices, such as those contained in the *Canadian Land Trust Standards & Practices*?

Once a suitable recipient organization has been identified, it is important to be aware of all the different conservation options available, in order to select the best fit for each individual donor and property. Many donors choose to donate their land outright. A donation may be structured to allow donors to have continued use of their property during their lifetime. Donors who wish to retain ownership, while ensuring the permanent protection of conservation values, usually pursue conservation agreements.

Split receipts can occur when donors receive some cash (or other form of advantage) for their property from a conservation organization. Generally the consideration should be for less than 80% of the appraised market value. In such cases, a charitable donation receipt for the difference between the cash given to the donor, and/or the value of any other consideration, and the market value of the property can be issued. Recipient agencies, or knowledgeable conservation professionals, can help donors identify and evaluate the various conservation options available to them.



Photo by Simon Lunn

Donors should be aware that, except in the case of split receipts, only gifts that are made without an intention to receive anything in return, except for a charitable donation receipt and modest recognition, will qualify as charitable. If they wish to have their gift designated an ecological gift, they should familiarize themselves with the provisions of the Ecological Gifts Program (see below). Recipient agencies can usually assist donors in accessing this information.

## Costs

Both the donor and recipient will incur legal fees. There will also be costs to transfer title such as fees for title searches, document registration and, in the case of fee simple donations, the property transfer tax. Also, the recipient will incur time/staff costs to facilitate the donation. The recipient and donor should determine at the outset who will pay these costs.

There are other potential costs stemming from additional studies and actions that may have to be undertaken. These may occur at various times during the donation process, depending on the transaction and the practices of the recipient. Again, the recipient and donor should determine who will pay these costs at the outset.

These costs may include:

- an appraisal of the fair market value of the donation – a requirement if the property is to be certified as an ecological gift, but also strongly advised for non-ecological gift donations for which a donation receipt will be issued;
- documentation of a property's ecological features to obtain a *Certificate for Donation of Ecologically Sensitive Land* (only for donations intended as ecological gifts);
- baseline documentation – should be prepared for conservation agreement donations to establish the condition of the land at the time of granting;
- a management plan – may be done at the time of donation so the donor can gain insight into how the recipient plans to manage the property;
- an environmental audit – may be required in some cases to assess risk of hazards;
- severance costs – if only a portion of an existing property is to be donated or placed under a conservation agreement, municipal severance approval may be needed, requiring application fees and other costs related to creating and registering a new parcel or agreement affecting title; and,
- a property survey – may be required to establish property boundaries, especially if land severance is involved.

Donors may also be asked for a donation to an endowment to care for the land. Such a donation and/or donor assistance with other costs helps recipients defray long term land stewardship costs.

## The Five Steps

### Discuss

The donor should thoroughly discuss the terms of the donation, especially in the case of conservation agreements. At this point, the recipient will often produce a draft conservation agreement for the donor and donor's lawyer to consider.

### Assess and Analyze

Consult with a lawyer and financial advisor regarding the financial, income tax, and legal aspects and implications of the donation. Before an appraisal and other documentation occurs, the terms of the donation should be firmly set. While changes can be made up until the time the donation is completed, these changes bring additional costs, take time, and can slow or stop the donation process.

## Decide

Signify the intention to donate to the recipient. It is often best to do so in writing in order to spell out mutual expectations and to give a firm commitment to the recipient. This may involve a letter of intent to donate signed by the donor or a formal donation agreement between the donor and the recipient (similar in form to an agreement of purchase and sale).

## Donate

The donor's and recipient's lawyers will begin the donation (transfer of title or interest in land) process. This will involve the donor signing formal legal documents. If the donation is a conservation agreement, the donor and recipient would also sign the final conservation agreement - and possibly the baseline report - prior to registering the agreement.

## Donation receipt

The recipient may issue a donation receipt for income tax purposes upon completion of property transfer in accordance with the guidelines set out by the Canada Customs and Revenue Agency. If the donation is an ecological gift, Environment Canada advises recipients to issue donation receipts after the *Statement of Fair Market Value* is issued.

## Ecological Gifts Program

The federal government's Ecological Gifts Program allows individual or corporate landowners to donate full or partial title to their land and receive enhanced income tax benefits, such as lower capital gains inclusion rates and increased claim limits. These may apply to donations of ecologically significant land or conservation agreements (including conservation easements and covenants).



The ecological gift donation process is the same as that for regular donations except that the Minister of the Environment (Environment Canada) certifies the ecological sensitivity and fair market value of the donation. When the recipient is a charity, the recipient must also be certified. A donation can be certified as an ecological gift up to three years after the donation has been made or simultaneously with the process described above. It is important to note that final documentation required to claim enhanced tax benefits will not be issued until the property transfer is complete. The recipient often facilitates the ecological gift process for the donor.



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## Requirements for donors intending to make an ecological gift

Ensure the proposed recipient is qualified to receive ecological gifts. Contact Environment Canada or visit the Ecological Gifts Program national web site. If not already qualified, the recipient can apply to become qualified.

Environment Canada must receive legal and ecological information on the proposed donation, as well as the donor's Social Insurance Number in order to issue a *Certificate for Donation of Ecologically Sensitive Land*. The recipient usually submits this information on behalf of the donor according to the guidelines in the *Ontario Ecogifts Handbook*.

After the *Certificate* is issued, an appraisal of the fair market value of the donation must be submitted as per Environment Canada's *Guidelines for Appraisals*. The recipient often submits the appraisal on behalf of the donor. However, the appraisal must be accompanied by a signed *Application for Appraisal Review and Determination* from the donor.

After the appraisal is reviewed, the donor will receive a *Notice of Determination of Fair Market Value* from Environment Canada. The donor must select one of three options (to accept the value, request a re-determination of value, or withdraw from the Ecological Gifts Program), sign and return the *Notice* to Environment Canada.

If the donor accepts the value and provides evidence that the donation has been made, then a *Statement of Fair Market Value* is issued to the donor by Environment Canada .

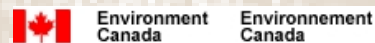
The donor submits the *Certificate for Donation of Ecologically Sensitive Land*, the *Statement of Fair Market Value*, and the donation receipt issued by the recipient with their income tax return.

For more information contact:

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