The Potential for Use of

Farmland Conservation Agreements

in Ontario

February, 2009

KAWARTHA HERITAGE CONSERVANCY

ONTARIO FARMLAND TRUST

Canada

ami AGRICULTURAL MANAGEMENT INSTITUTE

Ontario

Ontario Farmland Trust is a non-government, non-profit, charitable organization that has been established to work with farmers, rural communities and other interested parties to promote the protection of farmland in the province of Ontario.

Kawartha Heritage Conservancy is a locally-based land trust charity dedicated to conserving the natural and cultural heritage and distinctive landscapes of the Kawartha bioregion. Through partnership and stewardship, the Conservancy focuses on four program areas: conservation land acquisition, sustainable farming, promotion of The Land Between transition zone, and information sharing. The Farmlands Program facilitates preservation of the agricultural heritage of the bioregion and a sustainable future for its farmers and farmlands.

Ontario Farmland Trust
Richards Building
University of Guelph
Guelph , ON
N1G 2W1
519-824-4120, ext.52686
info@ontariofarmlandtrust.ca
www.ontariofarmlandtrust.ca

Kawartha Heritage Conservancy
416 Chambers St.
P.O. Box 2338
Peterborough, ON
K9J 7Y8
705-743-5599
conservancy@kawarthaheritage.org
www.kawarthaheritage.org

Additional copies of this document are available through Ontario Farmland Trust or Kawartha Heritage Conservancy.

KAWARTHA HERITAGE CONSERVANCY

ONTARIO FARMLAND TRUST

The Potential for Use of
Farmland Conservation Agreements
in Ontario

By:

Pat Learmonth, Farmlands Program Manager, Kawartha Heritage Conservancy

Susan Willis Chan, Research Coordinator, Kawartha Heritage Conservancy

With:

Ian Attridge, Executive Director, Kawartha Heritage Conservancy

Matt Holmes, Senior Tax Manager, BDO Dunwoody, Peterborough

February, 2009

This project is funded in part through contributions by Canada and the Province of Ontario under the Agricultural Management Institute (AMI) program, an initiative of the Federal-Provincial-Territorial Agricultural Policy Framework designed to position Canada's agri-food sector as a world leader. The Agricultural Adaptation Council administers the AMI program on behalf of the Government of Canada and the Province of Ontario

Kawartha Heritage Conservancy would like to thank the following people for their time and effort in reviewing and commenting on a draft of this paper: Dawn Laing, Environment Canada; Stewart Hilts, University of Guelph; Melissa Watkins, FarmStart; Bruce Mackenzie, Ontario Farmland Trust; David Konrad; Kathy Allen, Ontario Land Trust Alliance; Don Gordon, Thames Talbot Land Trust. We have benefitted significantly from their insights and suggestions. Nonetheless, the paper represents the views of Kawartha Heritage Conservancy only and does not necessarily represent the opinions of reviewers or their organizations.

This report is not intended to provide legal or financial advice. Individuals who wish to consider these options should seek independent advice from a lawyer, accountant, financial advisor and/or other professionals.

Table of Contents

Executive Summary

This Report is written for the land trust community and its advisors. It addresses the potential for use of conservation agreements on farmland in Ontario. The Report concludes that farmland conservation agreements (FCAs) have the potential to become an effective tool to protect farmland and facilitate its succession to new farmers in some cases. However, there are a number of thorny issues, including managing transaction costs and properly appraising the value of the agreements, which are beyond the scope of the research (see Report Limitations, p.13).

The Report is structured around three overarching objectives, addressed in three separate, though linked, sections (Tax Research, Case Studies, and Implications for Land Trusts).

These objectives are:

1. To assess the relative significance of various factors in determining the financial attractiveness to a farmland owner of donating an FCA or title to farmland. This emphasis on financial impacts recognizes that it is necessary to be realistic about the limited financial capability of farmers to donate capital required to support them in retirement.
2. To illustrate using case studies, a cross-section of potential fact situations in which the motivating factor for the various parties may or may not be purely financial.
3. To provide guidance for the land trust interested in farmland protection and succession.

The Tax Research section analyzes 88 tax scenarios produced by BDO Dunwoody, a respected accounting firm. The numbers are accurate and reliable given the set of assumptions made about a "model farm". The tax scenarios look at the outcomes to the owner of donating title or an FCA to a land trust. Variables are applied to the model that allow for the circumstances of farmland owners (eg income level, tax status) and the transaction itself (eg. ecogift designation, split receipt). The outcomes are compared to the amount of cash in hand that the owner would realize on a sale at fair market value. The financial analysis suggests that

- there are no circumstances under which an outright donation of title will result in the owner remaining "whole" financially,
- the tax advantages are greatest when donating an FCA on the whole farm,

- the farmland owner always benefits from additional cash contributions from the land trust, although if they are too high they may actually attract tax,
- low income farm owners are at a disadvantage if they receive tax benefits that are greater than they are able to utilize fully within the six year period permitted by the tax laws,
- farmland owners who have used up their “lifetime capital gains deduction”(LCGD) for other purposes (or want to retain it for future purposes) will find ecogift designation an attractive way to avoid capital gains tax; farmers with the LCGD available do not need the ecogift benefits because they can avoid capital gains tax by using their LCGD.
- the ideal farmland conservation agreement is one in which three parties are involved - the landowner, the land trust, and a purchaser who is a farmer. In this case, negotiations may achieve permanent legal protection of the farmland, financial “wholeness” for the seller, and a reduced purchase price for the new farmer.

The Report goes on to illustrate, using eight Case Studies, scenarios in which financial outcomes may or may not be the only motivating factor for the farmland owner. The Case Studies include situations in which the farmland owner may be motivated by the need for cash to make improvements on the farm in the short term, or a desire to see the farm protected permanently from development.

One of the main points made throughout the Report is that every situation is unique, not only because of the unique goals and imperatives of the farmer, but also because individual land trusts may have different priorities and financial means. In all cases, a qualified tax advisor should be retained to analyze the options available given the unique facts of the situation.

The Report suggests that land trusts interested in farmland protection and succession to new farmers consider

- prioritizing farmland for protection within their geographical area of interest
- communicating with farmland owners and their advisors about the potential for using farmland conservation agreements and the land trust’s priorities
- fundraising to support farmland protection, especially in view of the public’s current interest in food and farmland
- encouraging farmland owners to connect with young farmers looking for land, and

- creating plans to deal with donated farmland, recognizing its importance as "working land".

The Report also suggests that land trusts may want to develop a "whole farm" policy for FCAs. Conservation agreements on the whole farm have the following benefits:

- biodiversity is maintained on the farm, increasing its sustainability,
- the farmland owner will realize a greater tax savings from protecting the whole farm rather than a portion of it, and
- if a portion of the farm qualifies as an ecogift, the benefits may extend to the whole farm

If Ontario land trusts take the time to consider farmland as a valuable community asset, it will benefit not only farmers. The sustainability of the broader agricultural economy and many rural communities depends on farmland succession over the next 15 years. Ontario needs local food producers for long term food security, and the underlying environmental value of farmland needs protection against unremitting and inappropriate development. Farmland conservation agreements are one among a suite of tools available to protect these assets for a sustainable future.

Background

The Present Socio-Political Climate in Ontario Regarding Agriculture:

Ontario has more than half of the best agricultural land in Canada. However, over 18% of that land has already been permanently lost to agriculture through development and urbanization. As farmland [1] is swallowed up by urbanization, further pressure is put on surrounding farmland because it is no longer valued for its potential to produce food or its environmental attributes but for its speculative development potential. As land prices rise, aspiring new farmers (and even established farmers) are often unable to compete with developers and urban buyers looking for a country retreat.

At the same time, the traditional succession link between generations on the family farm has weakened. For various reasons, many farm businesses today have marginal financial viability. Many farm owners/operators have off-farm jobs to supplement farm income. Whereas in the past family farms would pass as a matter of course to the next generation, today many are being sold out of the family as the next generation pursues more profitable employment.

This creates a climate in which increasing numbers of farms are not being used to grow food, fuel or fibre. In a ripple effect, local abattoirs, mills and support services are becoming fewer, reducing the essential infrastructure required to support a healthy farming community. Managing farmland succession to keep Ontario farmland in food production, without penalizing today's farmland owners, is a topic of pressing importance to the future of Ontario's food systems. Efforts are being made to improve farm viability and especially to encourage forward-thinking business planning by existing farm owners. Nevertheless, in this environment, additional tools are welcome if they can assist the community to:

- protect farmland for farming,
- facilitate succession to new farmers who will produce food, fuel, and fibre, and
- ensure that today's retiring farmers are not required to give up the equity upon which they depend for their retirement.

In 2005, farmland conservation agreements (sometimes called "easements") were introduced as another potential tool to protect land. In that year, Ontario's *Conservation Land Act* was amended to expand the allowable purposes for which an owner of land "may grant an easement to or enter into a covenant with one or more

[1] The term *farmland* rather than agricultural land has been used throughout the report because Ontario farms are often comprised of agricultural land and non-agricultural land, including forests and wetlands. This bio-diverse combination of land use is traditional and is increasingly being recognized as the most environmentally sustainable model for farms.

conservation bodies" to include agreements **"for the conservation, preservation or protection of the land for agricultural purposes"**.[2] We will refer to conservation agreements that include agricultural purposes and are registered on title as farmland conservation agreements (FCAs).

Farmland Conservation Agreements:

Farmland conservation agreements are not transfers of title. They are agreements, registered permanently on title, that specify what may and may not be done in the future with the land through the use of restrictions and covenants. Most commonly, FCAs restrict future development. Because the restrictions and covenants vary, the appraised value of the FCA, and the value of the property after the FCA is registered, vary with every situation. When an FCA is donated, the value of the property for tax purposes is reduced by the appraised value of the donation, and a tax receipt is issued to the landowner for this amount. A subsequent sale at a value higher than the property's value will trigger a capital gain.[3]

The tax consequences of FCAs are twofold:

- The donor receives a charitable tax receipt for the appraised value of the agreement. In our examples (where we make an assumption that the FCA has been appraised at half the value of the land), the land is worth $2000 per acre at fair market value so we assume $1000 per acre is being given away. A tax receipt for $1000 per acre is provided to the landowner that s/he can apply against the current year's income and for 5 further years.
- Any time a property is disposed of, even through donation, a capital gain may be triggered if the value of the property has increased since the time it was purchased. For this reason, landowners are interested in how they can avoid being taxed on these gains in FCA transactions.

FCAs are completely voluntary agreements made between a recipient [4], traditionally a land trust, and a farmland owner. FCAs must work for both parties, and they maintain a flexibility that allows each FCA to be tailored to the unique facts presented in the situation.

---

[2] *Conservation Land Act*, R.S.O. 1990, chapter C.28, paragraph 3(2)(d).

[3] Capital gains are the increase in value of a capital property (for example, land) between the time it was purchased and the time it was disposed. Capital gain on any disposition (sale or donation) is usually subject to tax, with a number of exceptions, such as on a principal residence and ½ hectare of contiguous land.

[4] As laid out in the Conservation Land Act, recipients of FCAs can be the Crown, a band as defined in the Indian Act, a municipal council, a conservation authority, a charitable foundation trustee, or others by regulation.

Every situation is unique, not only because of the variability of the facts, but because motivation plays an important role in determining whether the parties involved in an FCA can negotiate a deal that satisfies them all. For example, every owner of farmland is driven by his or her own personal goals and imperatives. There will be individuals who are able to enter into a FCA regardless of the financial costs in order to permanently protect their land. As a practical matter however, it is less likely for farmers to have this financial freedom than non-farmers who own farmland because so many farmers depend upon the equity in their farms to finance their retirement. Equally, land trusts have their own goals, priorities and financial constraints.

For succession and protection purposes, the ideal farmland conservation agreement is one in which three parties are involved - the landowner, the land trust, and a purchaser who is a farmer. In this case, negotiations may achieve permanent legal protection of the farmland, financial “wholeness” (where desired) for the seller, and a reduced purchase price for the new farmer. This is possible using the leverage created by the tax savings generated by the FCA and, where possible, cash contributions by the land trust. The combined effect of this triple-win scenario also ensures the farm will be kept in active agricultural production for the foreseeable future.

It is not possible to guarantee a landowner what the selling price of his or her land will be after an FCA is registered on title. Unless a purchaser has been arranged in advance and a price has been negotiated, eventually the land will be sold on the open market. Only then will the long term financial implications to the landowner of registering an FCA be certain.

Appendices B and C provide some basic history on farmland conservation agreements and also address the legal aspects of these agreements. In Ontario, there is no reason to believe that a properly drafted, monitored and defended FCA will be successfully challenged and overturned in the future. FCAs aim to protect farmland in perpetuity according to the terms set out in the FCA and authorizing law.

Report

In this report, we will assess farmland conservation agreements and their financial implications as tools for farmland protection and also for enabling succession to new farmers. However, they will not suit every situation by any means. They are one more tool to be explored as our communities work to keep active farming in our future.

Objectives

This report has three overarching objectives which will be addressed in three separate, though linked, sections (Tax Research, Case Studies, and Implications for Land Trusts). These objectives are as follows:

1. To assess the relative significance of various factors in determining the financial attractiveness to a farmland owner of donating an FCA or title to farmland. This emphasis on financial impacts recognizes that to protect farmland through a land trust, it is necessary to be realistic about the limited financial capability of farmers to donate capital required to support them in retirement. (See Section I below)
2. To illustrate using case studies, a cross-section of potential fact situations in which the motivating factor for the various parties may or may not be purely financial. (See Section 2 below)
3. To provide guidance for the land trust interested in farmland protection and succession. (See implications for Land Trusts below)

Limitations

The following limitations and caveats are emphasized to the reader:

1. The assumptions made in order to develop tax scenarios are the determinants of all the numbers generated in the research. Each FCA situation is unique and therefore the numbers in this research should be used for illustrative purposes only. The overall analysis is the important contribution, not the numbers themselves, although these numbers are accurate and reliable. It is essential that all the parties involved in negotiating an FCA seek independent, professional, legal and financial advice and that tax outcomes be generated for each landowner on an individual basis.
2. All transactions have associated costs for the parties (e.g. tax advice, legal advice, appraisals, search and registration costs, and land transfer tax). There is also a cost to the land trust for subsequent stewardship and enforcement of the provisions of the FCA. These costs must be seen as separate from the discussion here. Factoring them into the data as an assumption would add little to the meaning of the results, and applying them in variable form would only further complicate an already complex picture. In an attempt to focus clearly on the financial impact of the FCA, we have disregarded transaction, stewardship and enforcement costs. Who pays for the various transaction costs would typically be the subject of negotiation between the parties. The Ontario Land Trust Assistance Program (OLTAP) assists land trusts with the costs of land securement transactions to help conserve Ontario's biodiversity.

3. There are many other challenges associated with executing FCA agreements that are outside the scope of the present research. Some are listed as follows:
    - the challenge of drafting agreements for working lands if they are to include positive covenants to farm the land (which they need not),
    - the challenge of appraising such agreements when land values vary enormously over the province and appraisers disagree on potential land value impacts,
    - the difficult fit of farmland agreements into the Ecological Gifts Program, which is designed for natural habitats and ecologically significant sites, and
    - the lack of significant financial incentives beyond tax savings to encourage the donation of farmland conservation agreements.

Section I: Tax Research

Methodology:

A set of tax data was generated by a senior tax manager at BDO Dunwoody in Peterborough. In order to accomplish the complex tax analysis required to illustrate the utility of farmland conservation agreements, it was necessary to design a "model" farm with which the tax advisor could work. A set of assumptions was developed to reflect a somewhat average farm in much of Ontario. These assumptions (see below) were circulated to our partners before they were adopted to ensure that they were reasonable. In addition, a range of variables that could affect the tax impact of the FCA were taken into consideration and are enumerated below.

Assumptions Common to all Scenarios:

- Taxes are calculated based on the anticipated 2009 income tax rules, including consideration of the federal budget proposed on January 27, 2009.
- The farm owner is 20-64 years old.
- The farm is 100 acres purchased for $100,000.
- The farm includes a house and ½ hectare (1.24 acres) of land necessary for enjoyment and use of the principal residence, which was valued at $30,000 at the time of purchase.
- A similar but vacant (no buildings) 100 acre parcel recently sold for $200,000.
- A similar farm house and ½ hectare (1.24 acres) is currently valued at $250,000.

- There are depreciable farm buildings valued at $100,000 on the property.
- The buildings have an undepreciated capital cost (UCC) of $50,000 and original cost of $80,000.
- The property includes an ecologically important stream and woodlot comprising 40 acres.
- The conservation agreement is valued at 50% of the land value, i.e. $1,000 per acre, whether it be on part of the farm or the whole farm.

The assumed value of 50% for the conservation agreement represents one in a range of values that could have been chosen. Appraised values vary with proximity to development areas, current planning restrictions (e.g. Oak Ridges Moraine Conservation and Greenbelt Plans, zoning), and the type of restrictions. In general, the more restrictive the conservation agreement is, the higher its appraised value. Conservation agreement values for ecogifts as set out in the 2007 Ecological Gifts Program Tax Scenarios Handbook range from 20-40% but other values ranging between 15% and 88 % have also been applied by appraisers in Ontario recently. Rather than introduce another variable into the research, an average value of 50% was applied to all scenarios. The monetary effect on the landowner of increasing or decreasing the appraised value of the donation is beyond the focus of this research.

Variables Applied to the Common Assumptions:

The financial impact on a farmland owner is also affected by six variables in the research. Each will be discussed separately below. These variables are as follows:

1. Whether property title is transferred (FCA versus donation of title),
2. The taxable income level of the farmland owner,
3. Whether the donation qualifies an Ecological Gift,
4. Availability of the Lifetime Capital Gains Deduction (LCGD),
5. Whether all or just a part of the property is included in an FCA,
6. Whether the interest is donated or is partly sold and partly donated, (referred to as a split receipt).

1. Whether Property Title is Transferred:

A sale on the open market at fair market value (FMV) [5] , a roll-over of title [6] to a family member, or a title donation [7] to a land trust each involves the transfer of ownership of the farm away from the farm owner.

A Farmland Conservation Agreement is registered on the title but does not involve the transfer of title (ownership). As a result, the landowner may choose to continue living on the farm and may dispose of the farm subsequently at any time and in any way he or she chooses.

Tax calculations were made for scenarios with and without a transfer of title.

2. The Taxable Income of the Farmland Owner:

We have analyzed tax scenarios for farmland owners with two levels of taxable income, called “lower” ($36,000) and “higher” ($123,000), to capture some of the effect of the different rates at which tax is applied in different tax brackets. [8] Individuals with higher taxable incomes can potentially take better advantage of tax credits from donations.

3. Whether the Donation Qualifies as an Ecological Gift:

If the farm qualifies as an ecological gift (ecogift) under the Federal Ecological Gifts Program in the *Income Tax Act* (Canada), the donated portion receives special tax treatment, i.e. it is exempt from capital gains tax and has enhanced claim limits. An entire farm property may qualify if a significant portion of the property qualifies AND the remaining acres are managed in a way that is compatible with maintaining and protecting the ecological integrity of the lands that were certified.

Half of the tax scenarios on the 100 acres and the 40 acres assume the donation qualifies as an ecogift, and the other half do not. The sixty acres of farmed land, on its own, does not qualify as an ecogift since an ecogift must satisfy the ecological sensitivity criteria set forth by the Ecological Gifts Program.

[5] FMV is the estimated amount the landowner would receive if he or she sold the property on the open market to the highest bidder.

[6] A roll-over of title is a farm succession tool which allows a landowner to transfer title to a family member without triggering a taxable capital gain.

[7] Title donation means that the landowner transfers the title to a new owner, namely a land trust. However, arrangements are sometimes made in which a landowner retains the right to live on the property even though he or she no longer owns it.

[8] The amounts $36,000 and $123,000 were chosen as the taxable incomes for the lower and higher taxable income scenarios respectively because they are near the highest taxable incomes that fit within their respective tax brackets for both federal and Ontario tax. As such, they are common “target incomes” for their tax bracket in 2009.

4. Availability of the Lifetime Capital Gains Deduction (LCGD):

The lifetime capital gains deduction is available to many farmers to offset the capital gains on farmland and other farm assets such as production quota. LCGD can be used to offset gains triggered on a donation or a sale. Lifetime capital gains deductions are not available to:

- Non-farmers (except under some circumstances when they have inherited it from farming parents),
- Most part-time farmers,
- Fulltime farmers who have used up their lifetime capital gains deduction or choose to apply it to something other than the FCA. Examples of farmers who may have used up their LCGD are those who have previously sold quota or other farm properties. Dairy farmers frequently sell their dairy quota, using up their LCGD, but continue to live on the farm. When they sell their farm(s), they may trigger large capital gains.

Tax calculations were made with and without the availability of the LCGD.

5. Whether all or Part of the Farm is included in an FCA:

Tax scenarios for three elements of the model farm were separately examined. These were as follows:

- the whole 100 acre farm,
- the 60 agricultural acres only, and
- the 40 ecologically important acres only (not really an FCA, as no agricultural land would be included).

6. Whether The Interest Is Donated Or Is Partly Sold And Partly Donated, (Referred To As A Split Receipt).

Both title donation and donation of an FCA can involve a straight donation (100% donation) or partial sale/partial donation arrangement (split receipt). The exact nature of the split receipt depends on negotiation between the donor and recipient of the donation. For simplicity, the research was restricted to three types of possible arrangements as follows:

- 100% donation,
- 50% donation, 50% sale (split receipt),
- 20% donation, 80% sale (split receipt).

Results and Analysis

The application of the preceding six variables to the basic assumptions resulted in the generation of a total of 88 separate sets of tax scenarios for analysis, 60 of which involved a conservation agreement and 24 of which involved the donation of title. For comparison purposes, another 4 tax scenarios were calculated that involved the sale of the farm on the open market. It should be noted that in situations where the donation of an FCA qualifies as an ecogift, there are no data for an FCA on only the 60 agricultural acres because agricultural land (by itself) does not qualify for ecogift designation under current legislation.

In order to make the data understandable, further analysis reduced the tax analysis to a series of summary tables (see Table 1 for sale on the open market scenarios; Tables 2.1 and 2.2 for title donation scenarios; Tables 3.1 through 3.8 for FCA scenarios). These allow for comparison of the various financial outcomes under a broad range of circumstances and allow for comparison of the two land protection tools (donation of title and donation of an FCA).

Table 1 below shows the amount of cash a farmland owner would have in hand after taxes if the “model” farm was sold at fair market value ($550,000). For example, the “higher income” farm owner with $123,000 taxable income in 2009 would end up with $536,083 if the advantage of the “lifetime capital gains deduction” is available. If the LCGD is not available, the landowner will realize only $501,125 because of the taxes payable on the capital gains. When assessing the financial attractiveness to the landowner of placing an FCA on a farm, it is important to remember these realities about the alternative on the open market. They provide a benchmark for assessing whether the landowner can come out financially “whole” in negotiations with the land trust.

Table 1.0 The After-Tax Dollar Value to the Landowner of a Sale of the Model Farm at Fair Market Value.			
	Sale price at FMV[6]	Taxes Payable on Sale at FMV[6]	After Tax Dollar Value of Sale
Taxable Income is $123,000:			
LCGD Available	$550,000	$13,917	$536, 083
LCGD Not Available	$550,000	$48,875	$501, 125
Taxable Income is $36,000:			
LCGD Available	$550,000	$ 9,559	$540,440
LCGD Not Available	$550,000	$41,915	$508,085

Tables 2.1 and 2.2 below illustrate the outcomes to a farmland owner of donating title to the farm to a land trust. This is not the same as donating an FCA, which leaves title with the owner. In the case of a donated title, the landowner will receive tax savings and possibly a cash contribution from the land trust, depending on the deal that is negotiated between the parties. When the tax savings are added to the cash contribution, if any, the total is the entire amount that the landowner will receive for protecting the land.

When donating title, there are no circumstances where a landowner ends up "whole" in comparison to selling on the open market. For example, from Table 2.1 (page 20), if a landowner (with a taxable income of $123,000, access to the LCGD and ecogift benefits) donates title to a land trust with a 50/50 split receipt, s/he receives $275,000 cash from the land trust plus tax savings of $32,547 in the first year and $73,888 over the next five years. In total s/he will receive $381,435 for the land which was valued at a fair market value of $550,000. However, if the farm had been sold it at fair market value, s/he would have received only $536,083 less real estate fees (see Table 1 above). The landowner is probably giving away about $100,000 by choosing to donate the land, so s/he is not coming out "whole", even with the enormous (and unlikely) contribution the land trust makes.

Table 2.2 illustrates an important outcome of the research. The lower income landowner ends up with virtually the same tax savings (approximately $32,000) from donating title, regardless of the other variables. Moreover, we will see later that s/he can get the same savings if s/he donates only an FCA without title (see Tables 3.1, 3.2, 3.3, and 3.4). This is because having the lower taxable income level prevents the landowner from being able to utilize all of the tax savings available from donation of title within the 6 year period allowed under the tax laws. This suggests that lower income farmland owners (who are probably more common than higher income ones) will likely prefer to donate an FCA over title. They will also want to sell the title eventually at a price that ensures they are financially "whole" overall, especially if they are relying on the equity in their farm to finance their retirement. The certainty of a pre-arranged sale at a set price to a farmer may be attractive to them in order to reduce risk.

Table 2.1 The Value to a Landowner with a Taxable Income of $123,000 of a Title Donation on Model Farm.

	Cash Provided by Land Trust	Tax Savings Year 1	Tax Savings Year 2-6	Total
Donation Qualifies as Ecogift				
LCGD Available				
100% Donation	0	$37,656	$201,516	$239,172
50% Donation, 50% Sale	**$275,000**	**$32,547**	**$73,888**	**$381,435**
20% Donation, 80% Sale	$440,000	$35,330	0	$475,330
LCGD Not Available				
100% Donation	0	$37,656	$196,875	$234,531
50% Donation, 50% Sale	$275,000	$37,238	$54,648	$91,886
20% Donation, 80% Sale	$440,000	$8,166	0	$8,166
Donation Does Not Qualify as Ecogift				
LCGD Available				
100% Donation	0	$37,656	$201,516	$239,172
50% Donation, 50% Sale	$275,000	$37,656	$73,888	$381,435
20% Donation, 80% Sale	$440,000	$35,330	0	$475,330
LCGD Not Available				
100% Donation	0	$37,088	$167,192	$204,280
50% Donation, 50% Sale	$275,000	$37,088	$39,565	$351,653
20% Donation, 80% Sale	$440,000	$2,132	0	$442,132

Table 2.2 The Value to a Landowner with a Taxable Income of $36,000 of a Title Donation on Model Farm.				
	Cash Provided by Land Trust	**Tax Savings Year 1**	**Tax Savings Year 2-6**	**Total**
Donation Qualifies as Ecogift				
LCGD Available				
100% Donation	**0**	**$4,949**	**$28,000**	**$32,949**
50% Donation, 50% Sale	$275,000	$4,949	$28,000	$307,949
20% Donation, 20% Sale	$440,000	$4,949	$28,000	$472,949
LCGD Not Available				
100% Donation	0	$4,635	$28,000	$32,635
50% Donation, 50% Sale	$275,000	$4,260	$28,000	$307,260
20% Donation, 20% Sale	$440,000	$4,090	$8,914	$453,004
Donation Does Not Qualify as Ecogift				
LCGD Available				
100% Donation	0	$4,949	$28,000	$32,949
50% Donation, 50% Sale	$275,000	$4,949	$28,000	$307,949
20% Donation, 20% Sale	$440,000	$4,949	$28,000	$472,949
LCGD Not Available				
100% Donation	0	$4,090	$28,000	$32,090
50% Donation, 50% Sale	$275,000	$4,090	$28,000	$307,090
20% Donation, 20% Sale	$440,000	$4,090	$2,881	$446,971

Tables 3.1 through 3.8 (See Appendix A, pgs 35-42) illustrate the tax savings and impact of various cash contributions by the land trust when an FCA (rather than title) is given. Once again, these Tables illustrate the outcomes for all the combinations of variables the research identified.

Note that the "split receipt" scenarios that were used to generate tax data (50% donation/ 50% sale, and 20% donation/80% sale) are only two possibilities on a continuum. Although any split may be possible, if the sale portion is higher than 80%, the donation may not be seen as an authentic use of the *Conservation Land Act*. This range of possibilities gives the parties negotiating an FCA a lot of flexibility to structure the agreement in the way that suits them best.

In order to provide further insight, Average Tax Savings have been calculated using averages of the results in Tables 3.1 to 3.8. These are intended to provide "order of magnitude" information, and to help to isolate variables to determine what their relative impact is on the financial outcome for the farmland owner. *The dollar values are a product of the research assumptions and are for illustrative purposes only. They should not be taken as a measure of expected tax savings across the board or in a situation which differs from the one described in our methodology.*

$$\textbf{Av. Tax Savings} = \frac{\textbf{Sum of Tax Savings within a given group of tax scenarios}}{\textbf{\# of scenarios within that group}}$$

The Average Tax Savings calculation verifies that tax savings are greatest on whole farm FCAs. For this model farm, Average Tax Savings for the whole farm are $19,283, for 60 acres are $11,357, and for 40 acres are $8,440. For simplicity, the remaining Average Tax Savings analysis is focused only on the whole farm.

At $37,100, the Average Tax Savings for an FCA on the whole farm are highest when 100% of the FCA is donated and the land trust makes no cash contribution. The size of the tax receipt for the donation goes down as the "sale" portion goes up. Nevertheless,, the total value of the FCA (contribution by the land trust + tax savings) to the landowner is highest if the land trust contributes cash equal to 50% or 80%. If the cash contribution is too high, the landowner may actually end up paying tax on the transaction, as in Table 3.2. This is counterproductive for all parties.

Average Tax Savings calculations also help to illustrate the effect of the tools available for avoidance of capital gains tax, i.e. ecogift designation and LCGD. FCA donations that qualify as ecogifts receive $2,763 more in tax savings on average than those that do not qualify, because of the capital gains exemption available on the donated value. The availability of lifetime capital gains deduction results in a substantially larger Average Tax Savings of $8,481 for a whole farm FCA in our model. The LCGD has the more powerful effect because it can be applied to both the donation portion and the sale portion of a split receipt donation, whereas the ecogift effect only applies to the donation portion.

A closer analysis suggests therefore, that if a farmland donor is prepared to donate an FCA (with no cash contribution by the land trust), then the availability of the LCGD or qualification of the donation as an ecogift both have the same effect, i.e. elimination of any capital gain triggered on the donation. On the other hand, where there is a split receipt (partial sale/partial donation) the availability of the lifetime capital gains deduction (LCGD) alone will result in a substantially larger tax savings than could be achieved with an ecogift alone. Alternatively, where possible, a combination of the two tools may be used – the LCGD against capital gains attributable to the sale portion, and ecogift benefits against the donated portion. If the farmer wants to retain as much of his LCGD as possible for a future transaction, the possibility of ecogift designation will be attractive.

The effect of taxable income level on the Average Tax Savings of a whole farm FCA is smaller than that of other variables. Landowners with the higher taxable income received $1,894 more in Average Tax Savings than those with the lower taxable income. High income landowners are more likely to be able to use their tax credits fully over the six years available to do so, whereas landowners with a lower taxable income may not.

Although this numerical analysis on the whole farm provides some insight, it is fundamentally important to recognize the unique nature of each fact situation and the role of motivation in tempering the significance of purely financial analysis. For this reason, we have also used a case study approach to the data which allows more scope for imagination (see Section 2). The tax numbers used in the case studies are the same as those used in the financial analysis, and as such are accurate and reliable.

<u>Section 2: Case Studies</u>

Eight case studies follow: Each includes a fictional fact situation that represents one of the eight sets of variable criteria - all of the combinations analyzed by the tax research. *The fact situations are just samples* - many fact situations could arise that would fit each set of criteria. The basic assumptions discussed earlier apply to all of the case studies.

The case studies were developed to reflect the realities of farmers and farmland owners. For example, realistic taxable income levels were assigned to farmers depending on the type of farming in which they are involved (Case Studies 1,2,3,7), and farmland owners who are not farmers are represented (Case Studies 5,6,8). The application of LCGD in many circumstances has been demonstrated. Succession concerns that a farmland owner might have when rolling over farmland to a child have also been addressed (Case Study 7), and a case has been included where a landowner wishes to donate title rather than register an FCA on the property because her motivations are not financial (Case Study 5). Case Studies 1,3,4,5,6, and 7 recognize that most land trust may not be able to contribute cash to an FCA, but examples in which a land trust is motivated to protect a particular piece of farm property and is willing to contribute cash to the FCA have also been included (Case Study 2,8).

Every owner of farmland is driven by his/her own personal goals and imperatives. For example, there will be individuals who are able to enter into a FCA regardless of the financial costs in order to permanently protect their land. As a practical matter, it is less likely for farmers to have this financial freedom than non-farmers who own farmland.

Farmers are more likely to find it necessary to maximize their returns from an FCA because the value in their land is all they have to finance their retirement (Case Study 7). Their long-term goals likely include the imperative to "come out whole" from a financial perspective (i.e. to obtain the same value from an FCA and a subsequent sale as they would have obtained by selling the farm without an FCA).

Some land owners may be motivated by short-term as opposed to long-term financial interests. They may be interested in using an FCA to reduce their taxes, and/or supplement their income to finance capital work on the farm (Case Studies 1,3,6). They may not intend to sell the farm at all, leaving them unconcerned about the effect of the FCA on the ultimate sale price of the farm.

Finally, some farmland owners may specifically want to pass on the farm to a farmer who does not have a lot of equity or cash (Case Studies 2, 4).

Given this diversity, it is difficult to make general statements about the "best" way to utilize farmland conservation agreements. Therefore, we will use examples to illustrate the possibilities for negotiated outcomes that meet the needs of all the parties.

In each case study, a Table is referred to where it is possible to see various choices available to the parties. The negotiated solution selected by the parties is bolded on the indicated Table, but all the other solutions are also included. Case studies 1-4 describe scenarios in which the landowner has a lower taxable income ($36,000) and case studies 5-8 describe scenarios in which the landowner has a higher taxable income ($123,000). Within each income level, the case studies are organized by secondary or tertiary variables (whether or not the donation qualifies as an ecogift and whether or not the landowner has LCGD available). Table 4.0 below is also provided for quick reference.

Table 4.0 Summary of Case Studies and Applicable Tables for Reference.					
Case Study Number	**Table Number**	**Taxable Income**	**Ecogift Status**	**LCGD Availability**	**Other Factors**
1 (pg. 25)	**3.1** (pg. 35)	$36,000	Not an Ecogift	Available	Maximum Tax Savings
2 (pg. 26)	**3.2** (pg.36)	$36,000	Not an Ecogift	Not Available	Succession to Farmer, Land Trust Contributes Cash
3 (pg. 26)	**3.3** (pg. 37)	$36,000	Ecogift	Available	Whole Farm vs Partial Farm FCA
4 (pg. 27)	**3.4** (pg. 38)	$36,000	Ecogift	Not Available	Pre-Arranged Buyer
5 (pg. 27)	2.1 (pg. 20)	$123,000	Not an Ecogift	Available	Donation of Title
6 (pg. 27)	**3.6** (pg. 40)	$123,000	Not an Ecogift	Not Available	Short-Term Goals
7 (pg. 28)	**3.7** (pg. 41)	$123,000	Ecogift	Available	Roll-Over to Child
8 (pg. 29)	**3.8** (pg. 42)	$123,000	Ecogift	Not Available	Non-Farmer, Land Trust Contributes Cash

Case Study One: See Table 3.1, bolded line, pg. 35

- Landowner has taxable income of $36,000
- Donation does not qualify as ecogift,
- Lifetime capital gains deduction is available

George has been a beef farmer his whole life but has no child interested in taking over the farm. When he sells, he does not want to see the family farm developed. The land does not qualify as an ecogift. George has a taxable income of $36,000, has the lifetime capital gains deduction available to him, and wants to continue to live on the farm for the foreseeable future.

The local land trust has no funds to purchase part of the conservation agreement, but decides that the farm satisfies its established property selection criteria. After considering the tax implications, the land trust and George register an FCA on the whole farm. The FCA protects the farm and provides $33,613 to George over 6 years in tax savings. This way, George gets the maximum tax savings available and can stay on the farm until he wants or needs to sell it.

Case Study Two: See Table 3.2, bolded line, pg. 36

- Landowner has taxable income of $36,000
- Donation does not qualify as an ecogift
- Lifetime capital gains deduction is not available

Mark is a former dairy farmer with a taxable income of $36,000 who used up his lifetime capital gains deductions when he sold his milk quota. He lives on the home farm now, but he owns a second farm to which he would like to move for retirement. The home farm is 100-acres and would not qualify as an ecogift. Mark plans to sell it, and although he is motivated to protect the property for farming, he does not want to lose any money in the process. If he sells the property without an FCA at $550,000, he will realize only $508,085 because of capital gains tax. (See Table 1).

Mark's tax accountant suggests that if he could find a buyer, he could protect the land without losing money and avoid real estate fees. The local land trust is willing to raise $50,000 towards an FCA on Mark's farm because it satisfies their established criteria for property selection. Through FarmLINK Ontario, he finds a new farmer who is interested in this opportunity. Mark agrees to mentor the new farmer in dairy production, sell him the farm at a reduced price, and to take a mortgage back. He will receive a down payment from the new farmer plus a monthly payment. Mark registers the FCA on the whole property with a 50% donation, 50% sale split receipt, and receives $60,505 in cash and tax savings over 6 years. The land is protected, Mark comes out "whole", and the new farmer pays $80,000-$100,000 less than the original sale price for the farm.

Case Study Three: See Table 3.3, bolded line, pg. 37

- Landowner has taxable income of $36,000
- Donation qualifies as Ecogift,
- Lifetime capital gains deduction is available

Joan is a retiring farmer with a taxable income of $36,000, who has the lifetime capital gains deduction available. She lives on her 100-acre farm, of which 40 acres are deemed ecologically sensitive under the criteria of the Ecological Gifts Program. The farm has a fair market value of $550,000.

Joan and her local land trust are motivated to protect her farm because it is near an expanding suburb and may soon be under development pressure. The land trust is able to contribute a maximum of $32,000 to the FCA which allows it to receive an FCA on only 40 acres of the 100 acre farm. However Joan's tax accountant points out that if she donates an FCA on the whole property, with no cash contribution by the land trust, she benefits more than if the land trust contributes $32,000 for a partial FCA.

The Ecological Gifts Program reviews the FCA and deems that it adequately protects the ecologically sensitive part of the farm and so qualifies the gift as an ecogift. Joan registers an FCA on the whole farm and receives $33,613 in tax savings over 6 years, the land trust contributes no cash, and the land is permanently protected.

Case Study Four: See Table 3.4, bolded line, pg. 38

- Landowner has taxable income of $36,000
- Donation qualifies as Ecogift,
- Lifetime capital gains deduction is not available

Anton is a new farmer who wants to purchase a farm that he is presently renting from a non-farming land owner who has a taxable income of $36,000. The farm has an ecologically important wetland on it and so could be eligible for an ecogift designation. Anton is unable to obtain financing to purchase the farm at fair market value, but he has discovered that a local land trust is committed to helping new farmers acquire land using farmland conservation agreements. Anton contacts the farmland owner, who agrees to explore the possibility of registering an FCA on his property and subsequently selling the farm to Anton.

The local land trust evaluates the farm and has funds up to $50,000 available to partially purchase an FCA on it. Anton visits his tax accountant who suggests that he would benefit the most from a sale where the FCA was registered on the whole property. The farm owner's accountant calculates that he would benefit most from the same arrangement. Between the two of them, Anton and the buyer agree that the original sale price of $550,000 will be lowered to approximately reflect the value of the FCA ($66,448 in tax savings plus cash from the land trust) and also the saved real estate fees, which together total close to $100,000. The landowner permanently protects the land from development, and he is satisfied that he has received the same amount for it as he would have on the open market ($508,085 - see Table 1). Furthermore, a young farmer has been given a chance to keep this land in production.

Case Study Five: See Table 2.1, bolded line, pg. 20

- Landowner has taxable income of $123,000
- Donation does not qualify as an ecogift
- Lifetime capital gains deduction is available

Carley is an environmentally-conscious urban dweller who has a high taxable income, and has just inherited her 100-acre family farm. She already owns a cottage and has no financial constraints, so in order to protect the farm, she decides to donate title to the farm to her local land trust. Because her parents actively farmed the land for the last two years and their gross revenue from farming exceeded income from all other sources, Carley has the lifetime capital gains deduction that she can apply against the capital gains tax on the donation. She receives $239,172 in tax savings over 6 years.

Case Study Six: See Table 3.6, bolded line, pg. 40

- Landowner has taxable income of $123,000
- Donation does not qualify as an ecogift
- Lifetime capital gains deduction is not available

John is a 45-year old professional who lives on a 100-acre farm, which he wishes to protect. The value of his farm has gone up significantly as the area he lives in has recently become quite popular with retirees. He leases his farmland to a new farmer and wishes to make capital improvements to the farm to help the new farmer and increase the food production value of the farm. John has a taxable income of $123,000, and no lifetime capital gains deduction. John will continue to live on the farm.

John's local land trust does not have funds available to contribute, but will accept a donated FCA. The land trust suggests that John would be able to obtain maximum tax savings to finance farm improvements from an FCA on the whole property. John donates a conservation agreement on the whole farm and receives $30,310 in tax savings (all in year one). The FCA protects the farm, and John uses the money to make capital improvements that increase the farm's value and are very helpful to the new farmer.

Case Study Seven: See Table 3.7, bolded line, pg. 41

- Landowner has taxable income of $123,000
- Donation qualifies as Ecogift,
- Lifetime capital gains deduction is available

Henry is a successful dairy farmer who lives on a 100-acre farm which contains ecologically sensitive features. He has a taxable farm income of $123,000 and the lifetime capital gains deduction is available to him. He and his wife Jen would like to register an FCA on their property to ensure that lots will not be severed off in the future, and then transfer title to their daughter and son-in-law. The Ecological Gifts Program certifies the donation as an ecogift after determining that the land meets its criteria, an approved appraisal has been made and it is satisfied that the FCA adequately protects the environmentally sensitive part of the farm.

Their tax accountant suggests that, although they have the “lifetime capital gains deduction” available, they should consider applying it to the future sale of their production quota instead. They can use the favourable capital gains treatment available for ecogift donations to eliminate the capital gains tax on the FCA donation. After discussions with their local land trust, they donate an FCA on the whole farm, do not apply their lifetime capital gains deductions but realize exactly the same tax savings ($44,244: Compare Tables 3.7 and 3.8) because of the ecogift. Their farm is permanently protected by the FCA, and they can proceed to roll over title to their daughter and son-in-law without concern.

Case Study Eight: See Table 3.8, bolded line, pg. 42

- Landowner has taxable income of $123,000
- Donation qualifies as Ecogift,
- Lifetime capital gains deduction is not available

Frank is the only son of a farmer who has recently passed away. The farm has been in his family for decades and his parents used up their lifetime capital gains deduction selling other assets. Frank wants the farm to stay in production, but he is not a farmer and has a high income. If he sells the farm on the open market at $550,000, he will end up with only $501,125 less the real estate fees (see Table 1). A donation of the farm qualifies as an ecogift after review by the Ecological Gifts Program because 40 acres of the farm is an ecologically sensitive forest with a stream, the FCA is designed to adequately protect those features, and an approved appraisal has been made. The land trust is very enthusiastic about Frank’s farm and is thinking of raising $80,000 toward obtaining an FCA on the whole farm. However their tax accountant points out that this would actually create a small tax liability for Frank. He suggests that reducing the land trust contribution might be a more effective use of land trust money. Frank registers an FCA on the whole farm, and receives close to $80,000 in cash and tax savings. If Frank can find a new farmer who wants to buy the farm privately with the FCA on it, he will sell it for far less than its original fair market value and may avoid paying real estate fees.

Conclusions:

The case studies above, and the tax research preceding them, help to illustrate the potential of farmland conservation agreements and make possible some general conclusions, discussed below. However, as stated previously, it is essential that all the parties involved in negotiating an FCA seek professional, independent, financial advice for their unique situations.

FCAs can be useful in a wide range of fact situations, regardless of the income level of the farmland owner, whether or not the land qualifies as an ecogift, and whether or not the owner has the lifetime capital gains deduction available to him.

Every situation is unique. The goals and situation of the farmland owner, as well as the goals and financial circumstances of the land trust, vary widely. Some goals are financial; others are not. Whether or not a deal may be negotiated that is acceptable to both the landowner and the land trust depends on the facts of each case. As with any contract, there will be many situations where no solution satisfies the needs and imperatives of all the parties.

Making a conservation agreement on the "whole farm" has the following benefits:

- it maintains the biodiversity on the farm, which contributes to its sustainability,
- the farmland owner will realize a greater tax savings from protecting the whole farm, and
- if a portion of the farm qualifies as an ecogift, the benefits may extend to the whole farm.

The tax savings resulting from an FCA on the whole farm are highest when the FCA is donated. However, the total value of an FCA to a farmland owner (cash contribution by the land trust + tax savings) is likely to be higher if the land trust contributes cash. If a landowner's motivation (or imperative) is financial, the land trust will have to assess what it is willing or able to contribute.

However, it is possible to envisage many cases in which the land trust would not have to contribute cash because the tax savings meet the needs of the owner. For example in Case Studies 1, 3, 5, 6 and 7, the farm owner either donates the property title or accepts only the tax savings in return for the FCA. In Case Studies 3, 6 and 7, the landowner receives tax savings close to a year's taxable income with no contribution by the land trust.

It is important to a farmland owner to address how he will avoid capital gains tax. If a farmland donor is prepared to donate an FCA (with no cash contribution by the land trust), then the availability of the LCGD or qualification of the donation as an ecogift both have the same effect: elimination of any capital gain triggered on the donation.

Where there is a split receipt (partial sale/partial donation), the availability of the lifetime capital gains deduction (LCGD) results in a substantially larger Average Tax Savings than could be achieved with an ecogift. The LCGD can be applied to both the donation portion and the sale portion of a split receipt donation, whereas an ecogift nullifies capital gains only on the donated portion. However, land trusts should be aware that the LCGD is not a tax saving created by donating an FCA. It is available to the farmer because s/he is a farmer and it may be used by him/her no matter how s/he disposes of his or her land or other capital assets. The farmer may have already used his/her LCGD up or may wish to keep it for future transactions. In that case, ecogift designation will be attractive. Alternatively, a combination of the two tools may be used – the LCGD against capital gains attributable to the sale portion, and ecogift benefits against the donated portion.

The effect of taxable income level on the average tax savings of a whole farm FCA is smaller than that of other variables. However, landowners with the higher taxable income received more in Average Tax Savings than those with the lower taxable income because they are more likely to be able to use their tax credits fully over the allowed six years, whereas landowners with the lower taxable income sometimes cannot.

Farmland owners with a lower income level may find, for the reason stated above, that the tax savings they are able to realize from donating an FCA are about the same as those from donating title to the whole farm. If they are relying on the equity in their farm to finance their retirement, they will be unlikely to donate title.

If there is a purchaser lined up for the farm, the options for making the deal work may be enhanced. Real estate fees may be avoided, and if the purchase price is attractive to the buyer while making up any shortfall to the seller, everyone wins. The ideal scenario is one in which the purchaser is a new farmer who is able to access farmland at a reduced cost. This keeps farmland in active production.

Implications for Land Trusts

Land trusts in Ontario have an important decision to make: Will they take advantage of the changes made to the Conservation Land Act in Ontario to include agreements "for the conservation, preservation or protection of the land for agricultural purposes"? If so, the foregoing research and analysis suggests they have an opportunity to provide leadership in making the connection between farm protection and farm succession to ensure a healthy future for Ontario farms and eaters.

Here are some ideas for the land trust ready to take this step.

1. Prioritize Properties

Establish priorities in assessing farmland properties. Factors to think about may include:

- land capability for the kind of agriculture found in the region e.g. soil types, topography, availability of water,
- zoning and other planning protection already in place (although this may protect against development, it may not actually encourage farming),
- special areas capable of producing scarce commodities,
- existing infrastructure (e.g. sugar maple operations, dairies, existing orchards, fencing, barns, farmhouse etc),
- wildlife habitat and biodiversity through shelterbelts, corridors, wetlands or woodlands,
- on-farm production practices and environmental risks,
- proximity to markets, and/or suppliers,
- features connecting the farm to the broader landscape,
- cultural, historic and/or scenic features on the farm.

An assessment of the agricultural assets of the community makes it possible to put a strategy in place before a property becomes available. FCAs provide better protection to agricultural land and better financial outcomes to landowners if they are placed on the whole farm rather than on a portion of it. Land trusts could consider adopting a "whole farm" FCA policy.

2. Communicate with Farmland Owners about the FCA Tool

This report provides information to help land trusts to be as knowledgeable as possible in dealing with farmland owners. The financial information provided in Section 1 informs land trusts about the financial imperatives of landowners and outlines the types of variables that may be involved in negotiating an FCA. The case studies in Section 2 demonstrate that landowners may be motivated by a range of factors. Landowners often are not aware of the opportunities that farmland conservation agreements make available to them, and nor are their advisors. Informed land trusts can help to educate them by communicating with them about the FCA tool as well as the land trust's own interests and priorities. A simple reproducible questionnaire is also included here as Appendix D. It will help to provide the information a lawyer or tax advisor will need. A farm tax expert should be consulted in every case to generate options specific to the circumstances.

3. Fundraise to Support Acquisition of Conservation Agreements

Many farmers will retire over the next 15 years, and will be depending on the equity in their farms to support them. It will not be realistic to expect many of them to make an outright donation of farmland to a land trust. This research has shown that the more cash the land trust can contribute, the more cash the farmland owner will have in his pocket.

In raising money for acquiring an FCA, a land trust can point to how little money (as a percentage of the value of the land) may be required to protect a piece of farmland with a farmland conservation agreement, and how much leverage is available because of the tax relief created. The public is interested in farmland protection and local food today, and this interest may create new fundraising opportunities.

However, in areas where development pressure is very high and land is selling at tens of thousands of dollars per acre, there is little a land trust can do without a monumental effort being directed at individual properties for specific reasons. While this is a rare possibility, for the most part the land trust should probably be focusing on land that is not presently under strong development pressure but may be so in the future. This kind of foresight allows for protection of farmland where and when it is still realistic.

4. Facilitate Connections with New Farmers

While a land trust is unlikely to actually broker an arrangement between a purchaser and seller, it can facilitate farm succession. For example, the land trust could support local farmers in finding out about the new FarmLINK Ontario web-based tool that makes it possible for new farmers to find farmland across the province. The "Matchmaker" tool is a joint project of FarmStart, Ontario Farmland Trust and Kawartha Heritage Conservancy and is found at www.farmlinkontario.ca. The Ontario Land Trust Alliance website at www.olta.ca helps farmers to find the local land trust in their area. The land trust could work with both parties and a tax accountant and other professional advisors to achieve the best outcome for all.

It should be noted, however, that even at the reduced cost available because of an FCA, many new farmers will still find it difficult to come up with the down payment and the financing to buy a farm. New farmers will be exploring many different avenues for financial support.

5. Deal Thoughtfully with Donated Farmland

If a land trust is fortunate enough to receive a donation of title to farmland, it is important that the land be assessed for its agricultural potential. Farmland should not be viewed simply as a reforestation project, but should be considered in a wider context with an appreciation for farming and partnership opportunities. Even small acreages have potential. Farmers are able to grow enough vegetables for 100 families on four acres. Nor should ecologically sensitive land (a woodlot, wetland or stream area) be severed from a farm. These areas are sources of water for livestock, sources of additional income such as maple syrup, and they also add flexibility and biodiversity to a farm which is critical to its integrity and sustainability.

Donated land may be sold by the land trust with an FCA on it to a farmer, or leased to a farmer who is willing to respect the ecological and agricultural values the land trust wants to preserve. There may be many other creative ways for land trusts to illustrate the value of farmland to the community, such as renting community garden plots to city dwellers.

The costs of managing active farmland on an ongoing basis must be considered. On the other hand, they may be partially offset by the income from renting the land for agricultural purposes.

If Ontario land trusts take the time to consider farmland as a valuable community asset, it will benefit not only farmers. The sustainability of the broader agricultural economy and many rural communities depends on farmland succession over the next 15 years. Ontario needs local food producers for long term food security, and the underlying environmental value of farmland needs protection against unremitting and inappropriate development. Farmland conservation agreements are one among a suite of tools available to protect these assets for a sustainable future.

Appendices

Appendix A: Summary Tables for Farmland Conservation Agreements

Table 3.1 Options for structuring a Farmland Conservation Agreement (FCA) for a landowner with a taxable income of $36,000 where donation does not qualify as an ecogift and LCGD is available.

	Farmland Conservation Agreement				
	Cash From Land Trust (A)	Tax Savings Year 1 (B)	Future Tax Savings Years 2-6 (C)	Total Tax Savings (B + C) (D)	Total (A + D)
FCA Registered on:					
100 acres					
100% Donation FMV Donation = $100,000	**-**	**5,613**	**28,000**	**33,613**	**33,613**
50% Donation, 50% Sale FMV Donation = $50,000	50,000	5,613	16,823	22,436	72,436
20% Donation, 80% Sale FMV Donation = $20,000	80,000	5,613	2,900	8,513	88,513
60 acres					
100% Donation FMV Donation = $60,000	-	5,613	21,464	27,077	27,077
50% Donation, 50% Sale FMV Donation =$30,000	30,000	5,613	7,541	13,154	43,154
20% Donation, 80% Sale FMV Donation = $12,000	48,000	4,859	-	4,859	52,859
40 acres					
100% Donation FMV Donation = $40,000	-	5,613	12,182	17,795	17,795
50% Donation, 50% Sale FMV Donation = $20,000	20,000	5,613	2,900	8,513	28,513
20% Donation, 80% Sale FMV Donation = $8,000	32,000	3,175	-	3,175	35,175

The bolded line refers to the option for structuring an FCA illustrated in Case Study 1 (pg. 25).

Table 3.2 Options for structuring a Farmland Conservation Agreement (FCA) for a landowner with a taxable income of $36,000 where donation does not qualify as an ecogift and LCGD is NOT available

	Farmland Conservation Agreement				
	Cash From Land Trust (A)	**Tax Savings Year 1 (B)**	**Future Tax Savings Years 2-6 (C)**	**Total Tax Savings (B + C) (D)**	**Total (A + D)**
FCA Registered on:					
100 acres					
100% Donation FMV Donation = $100,000	-	4,915	28,000	32,915	32,915
50% Donation, 50% Sale FMV Donation = $50,000	**50,000**	**4,914**	**5,591**	**10,505**	**60,505**
20% Donation, 80% Sale FMV Donation = $20,000	80,000	(2,297)	-	(2,297)	77,703
60 acres					
100% Donation FMV Donation = $60,000	-	5,092	14,809	19,901	19,901
50% Donation, 50% Sale FMV Donation =$30,000	30,000	5,092	886	5,978	35,978
20% Donation, 80% Sale FMV Donation = $12,000	48,000	(1,460)	-	(1,460)	46,540
40 acres					
100% Donation FMV Donation = $40,000	-	5,181	7,815	12,996	12,996
50% Donation, 50% Sale FMV Donation = $20,000	20,000	3,777	-	3,777	23,777
20% Donation, 80% Sale FMV Donation = $8,000	32,000	(1,042)	-	(1,042)	30,958

The bolded line refers to the option for structuring an FCA illustrated in Case Study 2 (pg 26).

Table 3.3 Options for structuring a Farmland Conservation Agreement (FCA) for a landowner with a taxable income of $36,000 where donation qualifies as an ecogift and LCGD is available.

	Farmland Conservation Agreement				
	Cash From Land Trust (A)	Tax Savings Year 1 (B)	Future Tax Savings Years 2-6 (C)	Total Tax Savings (B + C) (D)	Total (A + D)
FCA Registered on:					
100 acres					
100% Donation FMV Donation = $100,000	**-**	**5,613**	**28,000**	**33,613**	**33,613**
50% Donation, 50% Sale FMV Donation = $50,000	50,000	5,613	16,823	22,436	72,436
20% Donation, 80% Sale FMV Donation = $20,000	80,000	5,613	2,900	8,513	88,513
40 acres					
100% Donation FMV Donation = $40,000	-	5,613	12,182	17,795	17,795
50% Donation, 50% Sale FMV Donation = $20,000	20,000	5,420	822	6,242	26,242
20% Donation, 80% Sale FMV Donation = $8,000	32,000	(82)	-	(82)	31,918

The bolded line refers to the option for structuring an FCA illustrated in Case Study 3 (pg 26).

Table 3.4 Options for structuring a Farmland Conservation Agreement (FCA) for a landowner with a taxable income of $36,000 where donation qualifies as an ecogift and LCGD is NOT available.

	Farmland Conservation Agreement				
	Cash From Land Trust (A)	**Tax Savings Year 1 (B)**	**Future Tax Savings Years 2-6 (C)**	**Total Tax Savings (B + C) (D)**	**Total (A + D)**
FCA Registered on:					
100 acres					
100% Donation FMV Donation = $100,000	-	5,613	28,000	33,613	33,613
50% Donation, 50% Sale FMV Donation = $50,000	**50,000**	**5,136**	**11,312**	**16,448**	**66,448**
20% Donation, 80% Sale FMV Donation = $20,000	80,000	(272)	-	(272)	79,728
40 acres					
100% Donation FMV Donation = $40,000	-	5,613	12,182	17,795	17,795
50% Donation, 50% Sale FMV Donation = $20,000	20,000	5,420	822	6,242	26,242
20% Donation, 80% Sale FMV Donation = $8,000	32,000	(82)	-	(82)	31,918

The bolded line refers to the option for structuring an FCA illustrated in Case Study 4 (pg 27).

Table 3.5 Options for structuring a Farmland Conservation Agreement (FCA) for a landowner with a taxable income of $123,000 where donation does not qualify as an ecogift and LCGD is available.

	Farmland Conservation Agreement				
	Cash From Land Trust (A)	Tax Savings Year 1 (B)	Future Tax Savings Years 2-6 (C)	Total Tax Savings (B + C) (D)	Total (A + D)
FCA Registered on:					
100 acres					
100% Donation FMV Donation = $100,000	-	37,659	6,585	44,244	44,244
50% Donation, 50% Sale FMV Donation = $50,000	50,000	23,096	-	23,096	73,096
20% Donation, 80% Sale FMV Donation = $20,000	80,000	9,239	-	9,239	89,239
60 acres					
100% Donation FMV Donation = $60,000	-	27,293	-	27,293	27,293
50% Donation, 50% Sale FMV Donation =$30,000	30,000	13,879	-	13,879	43,879
20% Donation, 80% Sale FMV Donation = $12,000	48,000	5,526	-	5,526	53,526
40 acres					
100% Donation FMV Donation = $40,000	-	18,520	-	18,520	18,520
50% Donation, 50% Sale FMV Donation = $20,000	20,000	9,239	-	9,239	29,239
20% Donation, 80% Sale FMV Donation = $8,000	32,000	3,670	-	3,670	35,670

Table 3.6 Options for structuring a Farmland Conservation Agreement (FCA) for a landowner with a taxable income of $123,000, where donation does not qualify as an ecogift and LCGD is NOT available.					
	Farmland Conservation Agreement				
	Cash From Land Trust (A)	Tax Savings Year 1 (B)	Future Tax Savings Years 2-6 (C)	Total Tax Savings (B + C) (D)	Total (A + D)
FCA Registered on:					
100 acres					
100% Donation FMV Donation = $100,000	**-**	**30,310**	**-**	**30,310**	**30,310**
50% Donation, 50% Sale FMV Donation = $50,000	50,000	8,084	-	8,084	58,084
20% Donation, 80% Sale FMV Donation = $20,000	80,000	(5,838)	-	(5,838)	74,162
60 acres					
100% Donation FMV Donation = $60,000	-	18,758	-	18,758	18,758
50% Donation, 50% Sale FMV Donation =$30,000	30,000	4,835	-	4,835	34,835
20% Donation, 80% Sale FMV Donation = $12,000	48,000	(3,518)	-	(3,518)	44,482
40 acres					
100% Donation FMV Donation = $40,000	-	12,493	-	12,493	12,493
50% Donation, 50% Sale FMV Donation = $20,000	20,000	3,211	-	3,211	23,211
20% Donation, 80% Sale FMV Donation = $8,000	32,000	(2,358)	-	(2,358)	29,642

The bolded line refers to the option for structuring an FCA illustrated in Case Study 6 (pg. 28).

Table 3.7 Options for structuring a Farmland Conservation Agreement (FCA) for a landowner with a taxable income of $123,000, where donation qualifies as an ecogift and LCGD is available					
	Farmland Conservation Agreement				
	Cash From Land Trust (A)	Tax Savings Year 1 (B)	Future Tax Savings Years 2-6 (C)	Total Tax Savings (B + C) (D)	Total (A + D)
FCA Registered on:					
100 acres					
100% Donation FMV Donation = $100,000	**-**	**37,659**	**6,585**	**44,244**	**44,244**
50% Donation, 50% Sale FMV Donation = $50,000	50,000	23,096	-	23,096	73,096
20% Donation, 80% Sale FMV Donation = $20,000	80,000	9,239	-	9,239	89,239
40 acres					
100% Donation FMV Donation = $40,000	-	18,521	-	18,521	18,521
50% Donation, 50% Sale FMV Donation = $20,000	20,000	9,239	-	9,239	29,239
20% Donation, 80% Sale FMV Donation = $8,000	32,000	3,670	-	3,670	35,670

The bolded line refers to the option for structuring an FCA illustrated in Case Study 7 (pg 28).

Table 3.8 Options for structuring a Farmland Conservation Agreement (FCA) for a landowner with a taxable income of $123,000, where donation qualifies as an ecogift and LCGD is NOT available.

	Farmland Conservation Agreement				
	Cash From Land Trust (A)	Tax Savings Year 1 (B)	Future Tax Savings Years 2-6 (C)	Total Tax Savings (C + D) (D)	Total (A + D)
FCA Registered on:					
100 acres					
100% Donation FMV Donation = $100,000	-	37,659	6,585	44,244	44,244
50% Donation, 50% Sale FMV Donation = $50,000	50,000	15,625	-	15,625	65,625
20% Donation, 80% Sale FMV Donation = $20,000	**80,000**	**(2,822)**	**-**	**(2,822)**	**77,178**
40 acres					
100% Donation FMV Donation = $40,000	-	18,521	-	18,521	18,521
50% Donation, 50% Sale FMV Donation = $20,000	20,000	6,227	-	6,227	26,227
20% Donation, 80% Sale FMV Donation = $8,000	32,000	(1,152)	-	(1,152)	30,848

The bolded line refers to the option for structuring an FCA illustrated in Case Study 8 (pg 29).

Appendix B: Farm Conservation Agreement History and Legal Status in Ontario

History

- 1800s: Restrictions on title are permitted under British common law.
- Mid-1900s: Conservation agreements are authorized in the United States, with a growing number of states permitting their use for agricultural purposes and the federal government providing federal income tax benefits for conserving farmland.
- 1974: Conservation agreements for heritage purposes are authorized under the *Ontario Heritage Act*.
- 1994: The Ontario Heritage Foundation (now the Ontario Heritage Trust, a provincial agency) enters into an agricultural land conservation agreement on part of the lands of the Ruthven Park National Historic Site in Cayuga.
- 1994: Conservation agreements for agricultural land conservation purposes are specifically authorized under the *Agricultural Research Institute of Ontario Act.*
- 1995: Conservation agreements by governments and charities for natural heritage conservation purposes are authorized under the *Conservation Land Act.*
- Mid-1990s: The Agricultural Research Institute of Ontario, on behalf of the Province of Ontario, negotiates farm conservation agreements with numerous landowners in the Niagara Region on specialty agricultural lands for a total cost of some $25 million; subsequently in 1995, this funding is withdrawn and the agreements are not completed.
- Mid-1990s: Ontario Nature and the Oak Ridges Moraine Land Trust negotiate several conservation agreements with landowners in Pickering that protect natural features and permit continuing agriculture.
- 1999: An Ontario Municipal Board settlement leads to the Ontario Realty Corporation selling some 5,000 acres of provincial land in Pickering to private owners, subject to registering conservation agreements that allow for farming to continue under conditions equivalent to existing local agricultural zoning.
- 2004: The Ontario Farmland Trust is formed and is supported broadly by the agricultural sector, provincial agricultural organizations and the University of Guelph.
- 2005: Some landowners in Pickering who purchased lands from the Ontario Realty Corporation in the early 2000s challenge the validity of the conservation agreements, and the City of Pickering agrees to release the agreements.

- 2005: The *Duffins Rouge Agriculture Preserve Act* is passed, which deems the Pickering conservation agreements to be valid and also permits conservation agreements to be entered directly for agricultural purposes under the *Conservation Land Act.*
- 2006: The *Planning and Conservation Land Statute Law Amendment Act* is passed which revises provisions for conservation agreements for various purposes (including agriculture) under the Conservation Land Act and permits them to cover part of a parcel of land without requiring a municipal consent.

Legal Status

- Conservation agreements are agreements between a land owner and a qualified organization. They are registered on the land title and contain conditions to protect identified features on the property.
- Conservation agreements are typically entered in perpetuity, but they may also state a specified term, such as for ten years.
- Conservation agreements are an interest addressed by the *Income Tax Act* (Canada), with specific treatment for those which qualify as Ecological Gifts.
- Conservation agreements are authorized under a variety of statutes, both in Ontario and across Canada and the United States.
- Conservation agreements for agricultural purposes are specifically authorized by the *Conservation Land Ac*t (section 3; see excerpts in Appendix C) and *Agricultural Research Institute of Ontario Act* (sections 3, 4, 4.1 and 9), and less directly by the *Ontario Heritage Act* (sections 10, 22 and 37).
- Restrictions on title potentially applicable on farm or agricultural land may also be authorized under the *Land Titles Act, Municipal Act, Planning Act*, and *Fish and Wildlife Conservation Act*, among others.
- The conditions contained in a conservation agreement depend very much upon the features being protected, the wishes of the land owner, and the needs of the authorized holder of the agreement.
- Typically, a conservation agreement includes a description of the current conditions of the property (a baseline report) and is monitored for compliance with the agreement by the authorized holder at least once a year.
- Should there be a serious violation of a conservation agreement's provisions, the authorized holder may take the matter to court to enforce the conditions, which may include an injunction and/or damages. As for other types of agreements and

land interests, litigation will involve a detailed consideration of the terms of the relevant documents and the evidence marshaled to establish the violation.

- Changes to or releases of a conservation agreement under the *Conservation Land Act* must be approved by the Ministry of Natural Resources and, if the agreement is also certified as an Ecological Gift, by the federal Minister of the Environment.
- There is limited case law in Canada regarding the enforcement of conservation agreements, however the history in the United States establishes a strong record of the courts upholding the agreements and enforcing their terms.
- Land trusts in Ontario, across Canada and the United States follow similar Standards and Practices to ensure that their organizations and their land transactions are sound.
- Land trusts in Canada follow the Canadian Land Trust Standards and Practices, the principles of which are integrity, perpetual responsibility, excellence and good governance. Several Standards and associated Practices are relevant to conservation agreements, donations and farmland:

Standard 1: Mission
The land trust has a clear mission that serves a public interest, and all programs support that mission.

Standard 8: Evaluating and Selecting Conservation Projects
The land trust carefully evaluates and selects its conservation projects.

Standard 9: Ensuring Sound Transactions
The land trust works diligently to see that every land and conservation agreement transaction is legally, ethically and technically sound.

Standard 10: Tax Consequences
The land trust works diligently to see that every charitable gift of land or conservation agreements meets federal and provincial tax law requirements.

Standard 11: Conservation Agreement Stewardship
The land trust has a program of responsible stewardship for its conservation agreements.

Standard 12: Land Stewardship
The land trust has a program of responsible stewardship for the land it holds other than through a conservation agreement for conservation purposes.

Appendix C: Excerpt from the *Conservation Land Act*

Conservation Land Act, Revised Statutes of Ontario. 1990, chapter C.28, as amended.

Definitions

3. (1) In this section,

"conservation body" means,

(a) the Crown in right of Canada or in right of Ontario,

(b) an agency, board or commission of the Crown in right of Canada or in right of Ontario that has the power to hold an interest in land,

(c) a band as defined in the Indian Act (Canada),

(d) the council of a municipality,

(e) a conservation authority,

(f) a corporation incorporated under Part III of the Corporations Act or Part II of the Canada Corporations Act that is a charity registered under the Income Tax Act (Canada),

(g) a trustee of a charitable foundation that is a charity registered under the Income Tax Act (Canada), or

(h) any person or body prescribed by the regulations; ("organisme de protection de la nature")

"owner" means the person registered on title in the proper land registry office as the owner of land. ("propriétaire").

Conservation easements and covenants

(2) An owner of land may grant an easement to or enter into a covenant with one or more conservation bodies,

(a) for the conservation, maintenance, restoration or enhancement of all or a portion of the land or the wildlife on the land;

(b) for the protection of water quality and quantity, including protection of drinking water sources;

(c) for watershed protection and management;

(d) for the conservation, preservation or protection of the land for agricultural purposes;

(e) for the purposes prescribed by the regulations made under this Act; or

(f) for access to the land for the purposes referred to in clause (a), (b), (c), (d) or (e).

Easement reserved by conservation body

(2.1) When a conservation body conveys land, it may reserve an easement for a purpose referred to in subsection (2).

Same

(2.2) A reference in any Act or regulation to easements granted under this Act also applies to easements reserved in accordance with subsection (2.1).

Assignment

(3) The easement or covenant may be assigned by a conservation body to another conservation body.

Validity

(4) The easement or covenant is valid whether or not the conservation body or assignee owns appurtenant land or land capable of being accommodated or benefited by the easement or covenant and regardless of whether the easement or covenant is positive or negative in nature.

Term

(4.1) The easement or covenant is valid for the term specified in it.

Amendment

(4.2) The owner of the land affected by the easement or covenant shall not amend the easement or covenant without the consent of the Minister.

Release

(4.3) The conservation body or assignee shall not release the easement or covenant without the consent of the Minister.

Notice to Crown

(4.4) No person shall commence a proceeding to amend or release the easement or covenant without giving notice to the Minister.

Registration

(5) The easement or covenant may be registered against the land affected in the proper land registry office and, once registered, it runs with the land against which it is registered.

Enforcement

(6) The conservation body or assignee may enforce the easement or covenant against the owner of the land and, if it is registered, against any subsequent owner of the land against which it is registered.

No merger of registered easement

(6.1) If a conservation body that is a party to an easement that is registered as described in subsection (5) becomes the owner of the affected land,

(a) the easement is suspended but does not merge; and

(b) if the conservation body afterwards conveys the land, the easement becomes effective again.

Mandatory assignment

(7) If a conservation body ceases to be a conservation body, it shall be deemed to have assigned every easement and covenant to which it is a party to the Minister.

Effect of deemed assignment

(8) The Minister may register notice of the deemed assignment against the land affected in the proper land registry office and may assign the easements and covenants, or any of them, or hold them as if he or she were a conservation body.

Rights preserved

(9) Subject to subsections (4.2), (4.3) and (4.4), nothing in this section limits a right or remedy that a person may have under any other Act, at common law or in equity in respect of an easement or covenant, if the right or remedy is not inconsistent with this section.

Deeming provision

(10) A covenant under this section, whether positive or negative in nature, shall be deemed to be a restrictive covenant.

Regulations

(11) The Minister may make regulations,

(a) prescribing persons or bodies for the purpose of clause (h) of the definition of "conservation body" in subsection (1);

(b) respecting those records, information, reports and returns with respect to easements and covenants that a conservation body holds under this section that the conservation body must keep, must open for inspection or must submit to the Minister or other person designated in the regulations;

(c) prescribing purposes for the purpose of clause (2) (e);

(d) providing for and respecting one or more registries of easements and covenants under this Act.

Appendix D: Sample Questionnaire

Profile of Farmland Owner:

Name: ____

Address: ____

____

Tel: _______________ Email: __________________________

Lot and concession: _______________ Township: _______________

Acres: _____________

Motivation (Circle any that apply):

- ☐ Protect land from development
- ☐ Keep farm actively farmed
- ☐ Obtain tax savings and Cash

____

____

Intentions regarding title to the farm (Circle one that applies)

- ☐ Sell land on open market
- ☐ Retain title
- ☐ Donate title
- ☐ Roll over land to family member
- ☐ Sell or rent land to new farmer/farmer

____

____

Intentions regarding conservation agreement: ☐ Whole farm ☐ Part of farm

Lifetime Capital Gains Deductions Available: ☐ Yes ☐ No ☐ Unknown

Interest in donation?: ☐ Yes ☐ No ☐ Maybe

Ecogift potential?: ☐ Yes ☐ No ☐ Maybe

Farm, ecological, cultural and other features: ______________________________

____

____

Timeline for completion of transaction: ______________________________

____

Name and number of tax accountant: ______________________________

____

Name and number of lawyer: ______________________________

____