

Conservation Easements for Agricultural Land Use

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Factsheet

ORDER NO. 11-027

AGDEX 812

MAY 2011

Conservation easements provide a way in which landowners may retain agricultural heritage and biodiversity on the future use of their land, while benefiting from specific tax credits. This Factsheet addresses the legal and tax issues surrounding the set up and maintenance of a conservation easement for agricultural land use.

AGRICULTURAL CONSERVATION EASEMENTS

A conservation easement is a legal agreement between a conservation body and a landowner that determines permissible and restricted land uses on that property. It is tied to the title of the land, sets out the terms of the easement, and is held and monitored by a conservation body. The conservation body can be a federal, provincial or municipal government body, an independent, non-profit conservation organization or a land trust.

Outlined in the agreement are the specific restrictions placed on the land for its future use, the process by which the agreement may be monitored by the conservation body, the rights the landowner maintains on the land after the agreement is in place, any consideration given to the landowner by the conservation body for the agreement (e.g., financial compensation to the landowner) and provisions for procedures to follow for future modifications of the agreement.

An agricultural conservation easement is also a tool for succession planning. It provides a formal agreement outlining provisions to ensure that one's land may provide a specific use for future generations. Landowners may decide to have a conservation easement placed on their land because they wish to have a measure of assurance that the ecologically sensitive features or agricultural land on their property will remain protected after the property is sold or transferred; they may also be motivated by tax credits or possible succession planning advantages.

Entering into a conservation easement is a voluntary, personal decision made by the landowner. It is important to include family members in the discussion when exploring the possibility of an agricultural conservation easement to ensure there is acceptance of the easement restrictions and its implications on future farm uses and the property's market value.

THE CONSERVATION AGREEMENT

Future land use restrictions

This section details specific restrictions on how the land is to be used once the agreement is in place. The agreement may pertain to the entire property or only to a portion. Restrictions may include:

- future development
- prevention of subdivision of the property
- specific land usage restrictions (e.g., land may be used for agricultural purposes only)
- prevention of the removal of certain vegetative species within designated natural zones

It is important to note that a conservation easement is a negotiated land restriction, not a regulated land restriction. Typically, the landowner meets with the conservation body to divide the property into different zones, to reflect the land's future use. Types of zones may include:

- residential areas, where the landowner would have no restrictions placed on land use
- agricultural areas, where land is reserved for farm use
- natural areas, where a greater restriction would be placed on land use for protection of ecologically sensitive features

Agriculture conservation easements do not interfere with normal farming practices. The conservation body and landowner develop a working relationship to ensure easements do not place undue restrictions on agricultural activities.

Agreement on premises monitoring

This section details the allowances for the conservation body to inspect the property to ensure compliance with the agreement.

Specific monitoring details may include:

- how the property may be monitored — access points, times/days when entry is permitted
- monitoring measurement criteria
- access to monitoring report by landowner

Again, it is important to note that the monitoring framework is negotiated between the landowner and the conservation body. A baseline report is developed during establishment of the easement to provide a basis for future monitoring of the property. Typically, monitoring by the conservation body occurs once a year.

The agreement also outlines provisions for the assignment of the conservation easement to another conservation body in the event that the original conservation body is unable to fulfill its role.

TYPES OF EASEMENTS

Conservation easement: Landowners can conserve the agricultural and natural values of their property and still retain ownership by donating a conservation easement to a registered conservation body that will restrict designated land use activities. The landowner continues to own the land and may sell the land to another party at any time, however, the owner's land use and any subsequent owner's use of the land will be restricted by the terms set out in the conservation easement. This may have an effect on the sale price of the land in the future.

Conservation easement with remainder interest: Landowners may donate the property and conservation easement to an eligible organization and retain the right to use and/or live on the land for their lifetime or the lifetime of someone else they name, such as children.

Conservation easement with full title: It is also possible for landowners to donate the ownership of the land and conservation easement to a conservation body. In some cases, donors of properties wish to protect the land from development.

Conservation easement with split receipt: It is possible for the landowner to receive some financial

compensation from a conservation body for a portion of the easement value. This will have an impact on tax considerations. Split-receipting is allowed if:

- the transfer of property is voluntary and the property transferred has an ascertainable value
- the conservation body is qualified to receive the gift
- any advantage received or obtained by the landowner is identified and its value is ascertainable
- the landowner's intent to enrich the recipient of the gift is clear

The landowner is presumed to have intended to enrich the conservation body in circumstances where the value of the advantage given to the landowner does not exceed 80% of the fair market value of the transferred property. Where the value of the advantage to the landowner exceeds 80% of the fair market value of the transferred property, a gift would be recognized only in exceptional circumstances where the landowner satisfies the federal Minister of Revenue that the transfer was made with intent to make a gift.

CONSERVATION EASEMENT PROGRAMS

All types of easement agreements have tax implications. Landowners are considered "donors," giving "interest" in the property over to the conservation body through an easement. The conservation body then holds the easement value, usually issuing a tax receipt to landowners for this donation. Conservation easement donations fall under two basic categories: the Ecological Gifts Program and other conservation easement programs.

The Ecological Gifts Program

The Ecological Gifts Program is administered by Environment Canada in cooperation with dozens of partners, including other federal departments, provincial and municipal governments, and environmental non-government organizations.

Landowners who have easements authorized through this program are eligible to receive tax incentives, including:

- no taxable capital gain on the donation of an easement or the sale of the property
- no income limit for calculating the tax credit/deduction (however, tax credits are non-refundable — they cannot be larger than required to offset the federal tax payable. Remaining tax credits may be carried forward up to 5 years.)
- donation value certified by the Government of Canada

To receive the full tax benefits of a gift under the Ontario Ecological Gifts Program, the land or easement donation must be certified by the federal Minister of the Environment or a delegated conservation body as ecologically sensitive according to specific national and provincial criteria, before it can be included under the Ecological Gifts Program.

Ecologically sensitive lands are areas or sites that currently or could, at some point in the future, contribute significantly to the conservation of Canada's biodiversity and environmental heritage.

The value of the Ecological Gift is determined by the Minister of the Environment and is derived from a certified land appraiser's assessment before the land or easement donation is made. The tax credit is defined as the difference in land values before and after the easement.

Once the land has been deemed ecologically sensitive and the appraisal has been certified by Environment Canada, the landowner is issued a certificate that allows the landowner to access specific tax benefits:

- Corporate donors may deduct the amount of their Ecological Gift directly from their taxable income.
- The value of an individual's Ecological Gift is converted to a non-refundable tax credit. The tax credit is calculated by applying a rate of 15% to the first \$200 of the donor's total gifts for the year and 29% to the balance.
- A reduction in federal tax payable will also reduce provincial tax.
- Unlike other charitable gifts, there is no limit to the total value of Ecological Gift donations eligible for the deduction or credit in a given year.
- Any unused portion of the donor's gifts may be carried forward for up to 5 years.
- Donors who dispose of capital property such as land may realize a capital gain — a portion of which is taxable — where the deemed proceeds of disposition exceed the property's adjusted cost base (usually the original purchase price of the land). This is generally the amount by which capital property appreciates in value while in the owner's possession. While for most gifts, the taxable portion is 50% of the capital gain, for an Ecological Gift, the taxable portion is 0%.

It is important to note that farmland can be included in an approved Ecological Gift because the assessment applies to the whole property, not just the natural

habitat. A farm that includes a significant wetland or woodlot can be approved due to the ecological significance of this habitat, but the approval extends to the entire property.

It is also important to note that the landowner may choose to discontinue participating in the program at any stage prior to the final certification being issued.

Responsibilities of Landowners Under the Ecological Gifts Program

To preserve and protect the land's biodiversity and environmental heritage, landowners are required to safeguard ecologically sensitive features of their property in accordance with the land use as set out in the easement agreement.

Landowners are required to obtain the permission of Environment Canada before any transfer of ownership or change in land use may take place.

A landowner interested in donating land or an easement through the Ecological Gifts Program may contact Environment Canada staff from the Ecological Gifts Program or a qualified recipient organization, such as a registered land trust or a municipality.

Other Conservation Easement Programs

Landowners wishing to register an agricultural conservation easement on their land who are ineligible or do not wish to participate in the Ecological Gifts Program may participate in a program offered by a conservation body, such as the Ontario Farmland Trust.

The landowner may contact the conservation body directly to negotiate an agreement suitable to both parties. It is important to verify that the land trust or environmental organization is registered as a charity before entering into any easement agreement. It is also recommended that landowners obtain legal and tax advice prior to entering into any agreement.

While these programs are less onerous than the Ecological Gifts Program, there are some disadvantages. Landowners entering into agreements outside the Ecological Gifts Program may be subject to capital gains tax upon the sale or donation of land or an easement.

Table 1. Considering options for protecting land

Calculation	Ecological Gift Split-receipt	Non-Ecological Gift Full Title	Ecological Gift Full Title
Certified fair market value	\$200,000	\$200,000	\$200,000
NOTE: The certified fair market value of an outright gift is generally the current appraised fair market value of the gift. The value of an Ecological Gift must be certified by the Minister of the Environment.			
Fair market land value	\$200,000	\$200,000	\$200,000
Cash received	-\$50,000	0	0
Donation receipt	\$150,000	\$200,000	\$200,000
Fair market land value	\$200,000	\$200,000	\$200,000
Original cost of land	-\$100,000	-\$100,000	-\$100,000
Capital gain	\$100,000	\$100,000	\$100,000
Taxable capital gain	\$12,500*	\$50,000	\$0
NOTE: For sales and non-Ecological Gift donations, 50% of the capital gain is taxable. *For the split-receipt, 50% of the portion of the capital gain attributable to the cash received is taxable (\$50,000 x 50%). There is no taxable capital gain if a full title Ecological Gift is made.			

Table 1 illustrates some of the tax implications of some of the different easement options. The information presented is for illustration purposes only. For information about the federal, provincial or property tax implications of making an ecological gift, consult the relevant federal, provincial income tax legislation or your professional advisor.

For more information on conservation easement programs to protect agricultural land, contact the Ontario Farmland Trust at www.ontariofarmlandtrust.ca.

For more information on the Ecological Gifts Program, contact Environment Canada at www.ec.gc.ca.

This Factsheet was written by Jennifer Stevenson, Business Finance Program Lead, Agriculture Development Branch, OMAFRA, Guelph. The author would like to thank Dawn Laing, Regional Coordinator Environment Canada, Professor Glenn Fox of the University of Guelph and Bruce Mackenzie of the Ontario Farmland Trust for their assistance in providing information and review of this Factsheet.

This publication is intended as general information and not as specific advice concerning individual situations. It outlines some of the legal and tax considerations of leasing arrangements but should not be considered as either an interpretation or complete coverage of the *Income Tax Act* or the law affecting land rental arrangements. The Government of Ontario assumes no responsibility towards persons using it as such. All land rental arrangements should be discussed with your farm management advisor, accountant or lawyer before they are signed.

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 ISSN 1198-712X
 Également disponible en français
 (Commande n° 11-028)

