



American Friends of Canadian Land Trusts

Conservation Lands Program

Background

In partnership with Canadian conservation organizations, American Friends of Canadian Land Trusts (AF) conserves significant natural areas in Canada owned by US taxpayers.

In the past, U.S. taxpayers who wished to permanently protect their special Canadian properties through donation of land or a conservation easement were frustrated by major tax obstacles. If donating to a Canadian organization, these landowners had to forego the U.S. income tax deduction that would have been available if the land or easement was given to a U.S. charity. If given to a U.S. charity, the donor faced a substantial Canadian capital gains tax due on the appreciated value of the donated land or easement. AF was created to help landowners overcome this obstacle so that the treasured landscapes of Canada in the ownership of U. S. taxpayers could be conserved for future generations.

AF is able to provide the ideal tax outcome for U. S. donors, by providing both a U.S. income tax benefit (through its designation as publicly supported 501(c)(3) U.S. charitable organization) and relief from Canadian capital gains tax (through its designation as a prescribed donee under the Canadian Income Tax Act regulations). To make this ideal tax scenario possible, AF cross-border land conservation projects must meet very specific tax and charitable law requirements and procedures on both sides of the border, as outlined below.

AF's Partnership Model

AF recognizes that our mission is best achieved by supporting the land conservation vision and activities of Canadian conservation organizations. Each of our conservation projects is therefore initiated and led by a Canadian partner (land trust, conservation organization or government agency). We look to their knowledge of the region and its conservation values to determine priority projects. Our partners are best suited to working with landowners to craft appropriate conservation agreements or to arrange the terms of gifts of land. Our partners are also better positioned than AF to manage land and to monitor and enforce the terms of an easement. Accordingly, we look to our Canadian conservation partners to complete all land procurement, stewardship and management activities for each project. All costs related to both procurement and stewardship are the responsibility of the sponsoring Canadian conservation organization and/or landowner. AF supports the Canadian partner and landowner(s) on each project, ensures all U.S. due diligence is carried out and that U.S. tax requirements are met, and ultimately accepts title to the property, or holds the conservation easement.

In the long run, AF's conservation mission is best accomplished by conveying the conservation lands and easements it receives to qualified conservation organizations in

Canada that are expert stewards of the lands being protected. The original property donation, however, must be made directly to AF because Internal Revenue Service regulations prevent donors (U.S. taxpayers) from receiving tax deductions if they give their land or easements to a Canadian organization. Similarly, the tax deduction would be jeopardized by any guarantees made with respect to AF's subsequent disposition of the land or easement (i.e. if the donor says the gift to AF is contingent upon the land/easement being transferred to the Canadian partner organization, then the gift is not tax deductible). To protect the donor's charitable deduction, AF structures its land acquisition/easement and its land/easement transfer to a Canadian partner as two entirely separate processes, with the AF Board making an independent decision about any future transfer of the land or easement.

Major Steps for Cross-Border Land Conservation Projects

Step One—Qualify as a Land Grantee

Conservation organizations that wish to collaborate with AF in cross-border land projects must first become designated as an AF "Land Grantee." See the AF website for complete information on how to apply. The application process ensures that AF is partnering with only bonafide charities or government agencies whose work fits within AF's land conservation mission and charitable purposes.

Step Two: Propose a Land Conservation Project to AF

Once qualified as an AF Land Grantee, your organization can bring forward land projects for consideration by AF. Your organization will lead the project, and provide the main point of contact for the landowner and their advisors. You will also be collecting all the information and undertaking the usual legal, survey, baseline study and other activities typically associated with your own Canadian land projects. AF will supply thorough, detailed instructions, checklists and template documents for your organization, for the landowner, and for the landowner's financial and legal advisors to use. We will do our best to support you and the donor throughout the process.

The Three Phases of a Land Conservation Project

- **Phase I Inquiry and Feasibility Assessment:** We begin with a preliminary review and approval of the overall project. The first step is submitting to AF an Inquiry and Feasibility Assessment form and associated maps, photographs and other narrative information, together with a letter of intent from the donor to demonstrate the landowner's interest in making a gift to AF. It is your job to provide rationale for the project, to justify its fit within your organization's conservation priorities, as well as to provide key information about the land, the donor, and the proposed project (location, scale, significance, conservation context, liabilities/risk, proposed donation approach etc.), to enable AF to make an informed decision about whether to proceed with the project. AF will provide the forms and information required.
- **Phase II Due Diligence:** Once AF approves the project in principle we then develop a mutually acceptable Procurement and Management Agreement between AF and your organization (based on a template AF will provide). The agreement provides AF with the

necessary assurance that an appropriate and able entity is caring for the property, or monitoring and enforcing the easement, while AF owns the land or partial interest in land. The agreement also confirms each partner's roles and responsibilities for the project, and establishes the mechanisms for paying project and long-term management costs.

AF provides a checklist for Phase 2 activities and documentation, together with templates for important elements, such as the baseline study template and a cross-border conservation easement template. During this phase your organization will be completing land procurement and due diligence activities such as title/legal work, property survey, appraisal, easement or deed drafting, baseline study and environmental assessment, and Canada Revenue Agency approvals for non-resident disposition of land. *Please note: AF can only accept properties with marketable title, that are free of liability concerns.*

- **Phase III Closing:** Once all phase 2 activities have been completed, and documentation approved by AF, the project can move to closing. The partner is responsible for working with the landowner to secure all the documents necessary to close and for providing these to AF for approval. AF provides a closing checklist and template documents for closing. AF's board must authorize the closing and acceptance of the donation.

Throughout the three phases, AF will be engaged in helping your organization and the donor to resolve problems and to work out the best possible conservation transaction.

Getting Started

To initiate a land or easement gift, or to learn more about the Conservation Lands Program, please contact AF. We will answer your questions and provide you with the documents described above, together with a step-by-step manual. We can also put you or the landowner or her advisors in touch with AF's U.S. legal counsel. Our experience suggests that your project will go more smoothly if it begins with one or more conversations before you complete the initial inquiry document. ***Please note: Cross-border land transactions are complex and take significantly more time to complete than projects within Canada.***

What does it cost?

AF operates on a cost-recovery basis. It has the good fortune to receive extensive pro-bono counsel and has a very engaged, knowledgeable board. Accordingly, the fee for land/conservation easement or other land protection transactions is \$3500 US. The fee is divided into three payments which are due with each phase of a transaction: \$200 U.S. for Phase I, \$2800 U.S. for Phase II, and \$500 U.S. for the final phase. If a transaction is not completed for some reason, only those fees for the work completed up to that point are payable (and cannot be refunded once the work is completed). Fees can be paid by the partner or by the donor.

The stated fee is based on a normal level of complexity. A complex project requiring AF to obtain extensive legal, estate tax or other professional advice and guidance, may require a corresponding increase in the fees, at the discretion of AF. The Canadian partner organization and the landowner are responsible for the costs of their own legal, tax and financial advice.

Please note—AF's fee structure is currently under review. A new fee structure will be in place by January 2012.

Special Requirements for Conservation Easements and Other Gifts of “Partial Interest in Land”

Eligibility of AF to Hold Conservation Easements in Your Province

Before completing our first conservation easement project in each province, we will be working with local Grantee organizations like yours to ensure that AF is eligible to hold easements in your province. If you are the first organization to complete a conservation easement with AF in your province, we may need your help if getting such approval or designation prior to completing our easement project with you!

IRS Rules for “Qualified Conservation Contributions”

The IRS has very specific requirements for tax-deductible gifts of partial interest in land. For example, there are special rules related to the purpose, term and contents of a conservation easement, and the timing, contents and commissioning of the supporting appraisal. AF can help your organization with ensuring the transaction meets US tax law requirements, and will need to work with your own local advisors to ensure any such gift also meets your own provincial easement, tax or other relevant legislation. Two specific requirements you may to know about up front:

IRS Status Requirement to Accept Transfer from AF

Gifts of partial interest in land must be received by and can only be transferred to organizations meeting certain criteria. Before your organization can receive transfers of such interests in land from AF, you must receive IRS determination as a foreign equivalent to a U.S. “publicly supported charity.” The Canada-US Income Tax Treaty recognizes Canadian charities as equivalent to U.S. 501(c) (3) organizations, but assumes they are a private foundation. The organization must apply to the IRS to confirm that it meets a public support test so it can be deemed equivalent to a publicly supported charity and therefore qualified to receive “qualified conservation contribution.” See our web page for a fact sheet on applying for this IRS designation.

Mineral Development Risk

To meet U.S. tax law requirements, gifts of partial interest in land must be proven to be free from any risk of mineral development. Your organization must secure a special letter/report from a mining expert to meet this Internal Revenue service requirement. AF can provide more information.

For Additional Information:

www.nsnt.ca/af

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