

#7

Frequently Asked Environmental Law Questions

PRIVATE LAND CONSERVATION

Q:

I own a lovely half section of land in rural Alberta, full of ponds and wildlife. I want to protect it so that it won't be developed and fragmented when I no longer own it, but I also want to keep living on it in my house, and be able to enjoy it. I hope that my children will enjoy it after me, however I'm worried that they will fall to the temptation to subdivide it into acreages. I don't want this to happen. Can I protect this land the way I hope to?

A:

The most straightforward way you can protect the land the way you envisage is through a conservation easement. A "conservation easement" is an agreement between a landowner and a "qualifying organization" to protect the natural values of land, for a specified time or forever ("in perpetuity"). Conservation easements are possible by virtue of sections 22, 22.1, 22.2 and 22.3 of the *Environmental Protection and Enhancement Act* (S.A. c. E-13.3) ("EPEA"). Under EPEA "qualifying organizations" include the provincial government, a municipality, and non-governmental registered charities formed to hold conservation land interests and complying with other EPEA requirements. (Many non-governmental organizations are qualified under EPEA to hold conservation easements. Call the Environmental Law Centre offices for suggestions.)

With a conservation easement you, as owner and the qualifying organization will enter into a written agreement to protect the natural values of your land for any of the purposes EPEA sets out. These purposes include, (among others) to protect and conserve the variety of plant and animal species, or natural, scenic or aesthetic values (s.22.1 (2)). The agreement will describe what portions of your half section are to remain natural and will be protected by the conservation

easement (the "conservation easement area"). The restrictions on development will only apply to the conservation easement area, so you will be free to use the rest of your land as you like. Even in the conservation easement area, the agreement may allow uses, provided that they do not conflict with the purposes for protecting the land. For example, a conservation easement might allow you to construct a modest trail through the conservation easement area and to allow foot access or it might allow habitat enhancement and restoration.

Under EPEA a conservation easement must be registered on title in order to "run with land", as lawyers say, and bind future owners. If a conservation easement on your property complies with EPEA and is registered on your title, it will restrict the uses of the land even when you no longer own it. For example, if your conservation easement requires that the forests and ponds remain in tact and that the conservation easement area not be subdivided, then no one may legally log the forests, drain the ponds or subdivide the land. The agreement will be enforced by the qualifying organization that holds the easement, so you should have confidence with the organization you deal with.

If you donate a conservation easement to a qualifying organization, you could qualify for

income tax relief. This is because the Canadian *Income Tax Act* allows donations of conservation easements to be treated as donations of capital property. The amount of tax relief you can expect depends on a number of factors including your taxable income, the value of the conservation easement, the potential for any capital gains, and whether the donation qualifies as an “ecological gift” under the Act.

If you are interested in conservation easements including potential tax savings, a good place to start for information is the Environmental Law Centre publication *Conservation Easement Guide For Alberta*.



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Environmental Law Centre

The Environmental Law Centre (Alberta) Society is a non-profit charitable organization operating in Alberta since 1982. The Society believes in making the law work to protect the environment and in support of this objective, provides services in environmental law education and assistance, environmental law reform, and environmental law research. The Society operates the Environmental Law Centre which is staffed by four full-time lawyers.

Funding is provided to the Society in part by the Alberta Law Foundation and through the generous support of the public. The Centre also accepts private and government research contracts for work relevant to and consistent with the Society's objectives.

For further information, pursue the following:

Environmental Law Centre Library Resources:

- CONSERVATION EASEMENT GUIDE FOR ALBERTA / Kwasniak, Arlene. --Edmonton: Environmental Law Centre, c1997.
- FOR THE LOVE OF ALBERTA: WAYS TO SAVE YOUR NATURAL HERITAGE: PRIVATE CONSERVANCY GUIDE FOR ALBERTA / Curthoys, Lesley Patricia. --Edmonton: Federation of Alberta Naturalists, c1998.
- PRIVATE CONSERVANCY: THE PATH TO LAW REFORM: PROCEEDINGS AND ADDITIONAL MATERIAL FROM THE ENVIRONMENTAL LAW CENTRE'S CONFERENCE ON PRIVATE CONSERVANCY HELD JANUARY 13, 1994, EDMONTON, ALBERTA / Kwasniak, Arlene J., ed. --Edmonton: Environmental Law Centre, 1994.
- PARTNERS IN LAND ACQUISITION / Hunt, Cheryl, ed. --Edmonton: Alberta Fish and Game Association, 1995.
- CONSERVATION EASEMENT VALUATION AND TAXATION IN CANADA / Attridge, Ian C. --Ottawa: North American Wetlands Conservation Council (Canada) 1997.
- APPRAISING A CONSERVANCY EASEMENT AND A PROFIT A PRENDRE: PREPARED FOR DUCKS UNLIMITED CANADA / Serecon Valuation and Agricultural Consulting Inc. --Edmonton: Serecon Valuation and Agricultural Consulting Inc., 1995.
- CANADIAN LEGISLATION FOR CONSERVATION COVENANTS, EASEMENTS AND SERVITUDES: THE CURRENT SITUATION / Silver, Thea, M. ...[et al.] --Ottawa: North American Wetlands Conservation Council (Canada), 1995.

Websites:

- <http://www.gov.ab.ca/acn/199610/4300.html> The provincial governments' announcement of the availability of conservation easement legislation. Includes a *Backgrounder on Conservation Easements*.
- <http://www.agric.gov.ab.ca/sustain/acc/97-3/acc8.html> An article by Mike Pearson, Policy Analyst with Alberta Agriculture, Food and Rural Development titled *Conservation Easements in Alberta*.
- <http://vcn.bc.ca/wcel/land/welcome.html> Site of the West Coast Environmental Law's involvement in land issues. This serves as a springboard to documents the organization has published including *Leaving a Living Legacy: Using Conservation Covenants in BC* and *Here Today, Here Tomorrow: Legal Tools for the Voluntary Protection of Private Land in British Columbia*. Also provides *Information for Conservation*, an electronic collection of legal and environmental materials regarding voluntary protection of private land in BC. While pertaining primarily to BC, much of the information is applicable.
- <http://www.farmland.org/Farmland/files/protect/faq.htm> A site of frequently asked questions on conservation easements and estate planning by the American Farmland Trust. Interesting look at using conservation easements to preserve agricultural land.
- <http://www.heritagefdn.on.ca/Heritage/conservation2.htm> Site of the Ontario Heritage Foundation. Demonstrates using conservation easements as a tool to preserve heritage lands.

- <http://www.lta.org/> Site of the Land Trust Alliance, a US national membership organization of land trusts founded in 1982. Provides worthwhile background information on a variety of ways landowners can protect their land.
- <http://www.unibase.com/~naturesk/easement.htm> Information on conservation easements from Nature Saskatchewan.

Contacts:

Alberta Environmental Protection Regional Offices at:

Prairie Region, Lethbridge, Phone 403-381-5512 Fax 403-382-4428
 Bow Region, Calgary, Phone 403-297-7948 Fax 403 297-6069
 Parkland Region, Red Deer, Phone 403-340-7744 Fax 403-340-5173
 Northern East Slopes Region, Edson, Phone 780-723-8357 Fax 780-723-8386
 Northwest Boreal Region, Peace River, Phone 780-624-6167 Fax 780-624-6542
 Northeast Boreal Region, Edmonton, Phone 780-427-7617 Fax 780-422-4192



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The information provided is current to December 31, 1998. While every effort has been made to ensure the accuracy and timeliness of the information, the answer, of necessity, is of a general nature. The Environmental Law Centre encourages individuals to seek specific advice on matters of concern and not to rely solely on the information in this publication.

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