



## **FACT SHEET: Conservation Easements**

This fact sheet is intended to provide answers to common questions that a landowner may have about placing a conservation easement on his or her land.

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### **What is a conservation easement?**

A conservation easement is a voluntary agreement between a landowner and a “qualified organization.” The purpose of the agreement is to protect the natural values of land for a specified period of time or forever (in perpetuity).

### **What law governs conservation easements?**

In Alberta, conservation easements are governed by sections 22-24 of the *Environmental Protection and Enhancement Act (EPEA)*.

### **What is a qualified organization?**

A qualified organization is defined in *EPEA* as including:

- the provincial government or government agency;
- a local authority, such as a municipality; and
- a registered charity that is formed to hold conservation land interests and whose bylaws indicate that any interest held will pass to another qualified organization on winding-up (dissolving the organization).

In Alberta, conservation easements are commonly donated or sold to a registered charity that has a conservation mandate. Please contact the Environmental Law Centre if you would like the names of qualified organizations in Alberta.

## **What does a qualified organization do?**

A qualified organization creates and carries out a management plan for the easement area and undertakes certain obligations set out under the conservation easement agreement. For example, a qualified organization typically has the right to post signs and to access the property for the purposes of monitoring and enforcing the conservation easement.

## **Why would I want a conservation easement?**

The reason for a conservation easement is to protect the natural values of your land for any of the purposes set out in *EPEA*. *EPEA* purposes include:

- protecting and conserving the environment, including the variety of plant and animal species;
- protecting and conserving natural scenic or esthetic values; or
- providing for land uses such as recreational use, open space use, environmental education, or for research and scientific study of natural ecosystems so long as the use is in accordance with the first two *EPEA* purposes outlined above.

In addition to conservation, if you donate a conservation easement to a qualified organization you could qualify for income tax relief.

## **What can I use my land for if there is a conservation easement on it?**

Allowable uses are set out in the conservation easement agreement. A variety of uses are possible provided that they do not conflict with the purposes of protecting the land. For example, a conservation easement might allow you to construct a modest trail through the easement area to allow foot access or it might allow habitat restoration to take place.

## **As a landowner, what are my obligations under the conservation easement agreement?**

As a landowner with conservation easement, your duties usually include:

- following the terms of the conservation easement agreement;
- giving notice to the qualified organization if you decide to sell the property;
- not subdividing, building on, or developing land;
- not depositing harmful or waste materials on the land;
- not excavating or removing land or water;
- not using the easement land for agricultural uses;
- maintaining insurance coverage on the land; and
- taking reasonable steps to stop and repair damage caused by others.

These duties are negotiated with the qualified organization so they may differ from the duties listed above. The conservation easement agreement will list the specific landowner obligations for that easement.

## **Does the conservation easement bind future owners of my land?**

Yes, the conservation easement binds future owners. Under *EPEA*, a conservation easement must be registered on your land title in order to “run with the land” and bind future owners of your property to the terms set out in the agreement. If a conservation easement on your property complies with *EPEA* and is registered on your land title, it will restrict the uses of that land even when

you no longer own it. The terms of the conservation easement will be enforced by the qualified organization.

## **Can oil and gas development occur on land covered by a conservation easement?**

Oil and gas development can occur on land covered by a conservation easement. However, the qualified organization may be able to participate in (and oppose) decisions regarding this land. The qualified organization may also be entitled to compensation for oil and gas development depending on the terms of the conservation easement agreement.

## **Are there tax benefits to having a conservation easement?**

If you donate a conservation easement to a qualified organization, you could qualify for income tax relief. This is true for corporations as well as for individuals. This is because under the federal *Income Tax Act* individual donors of land or conservation easements receive a tax credit arising from the value of the gifted lands. Corporations who donate land or conservation easements receive a tax deduction. Further tax benefits may be available if the donation qualifies as an “ecological gift” under the federal Ecological Gifts Program.

You should be aware that the conservation easement lands continue to have property taxes charged against them. Property taxes are the responsibility of the landowner, unless otherwise provided for in the conservation easement agreement.

## **How can my donation qualify as an ecological gift?**

An ecological gift is a donation of land or an interest in land – such as a conservation easement – that has been certified as “ecologically sensitive” by Environment Canada. Ecological gifts can be made to “qualified recipients” such as environmental charities approved by Environment Canada or government authorities. Under the Ecological Gifts Program, Environment Canada certifies the land is ecologically sensitive, approves the qualified recipient, and certifies

the fair market value of the gift. This allows individuals to qualify for a charitable donation tax credit, and corporations to qualify for a charitable donation tax deduction.

Ecological gift donations made on or after May 2, 2006 and certified under the Ecological Gifts Program will no longer be subject to tax on any capital gains accruing in respect of the property.

## **Where can I get more information?**

For general information on conservation easements or organizations that are qualified organizations, please contact the Environmental Law Centre. As noted below, the Centre has a publication on conservation easements called the *Conservation Easement Guide for Alberta*, which is available from our library or for purchase. Further resources are included below.

## Environmental Law Centre Library Resources and Online Catalogue:

Attridge, Ian C. *Conservation Easement Valuation and Taxation in Canada*. (Ottawa: North American Wetlands Conservation Council (Canada), 1997).

Curthoys, Lesley Patricia. *For the Love of Alberta: Ways to Save Your Natural Heritage: Private Conservancy for Alberta* (Edmonton: Federation of Alberta Naturalists, 1998).

Kwasniak, Arlene. *Conservation Easement Guide for Alberta* (Edmonton, Environmental Law Centre (Alberta) Society, 1997).

Michalshy, Sue. "Monitoring Compliance with a Conservation Easement." *A Legacy of Land: Conservation Easements and Land Stewardship. Proceedings of a Conference Presented by the Environmental Law Centre in Edmonton, Alberta June 18-19, 1988* (Edmonton, Environmental Law Centre (Alberta) Society, 1999).

## Online Articles:

Kerri Barringer. "Conservation easements – benefits and barriers" (2004) 19:3 *Environmental Law Centre News Brief* 12, online: Environmental Law Centre <<http://www.elc.ab.ca/publications/NewsBriefDetails.cfm?ID=816>>.

Kwasniak, Arlene. "Granting conservation easements to yourself" (2001) 16:3 *Environmental Law Centre News Brief* 12, online: Environmental Law Centre <<http://www.elc.ab.ca/publications/NewsBriefDetails.cfm?ID=715>>.

## Additional Online Resources:

Environment Canada Ecological Gifts Program, online:  
<<http://www.cws-scf.ec.gc.ca/egp-pde/>> - this website provides information on the federal Ecological Gifts Program.

## **A word of caution about your use of this material**

The information provided in this fact sheet is current to December 31, 2006. While every effort has been made to ensure the accuracy and timeliness of the information, the information provided is of a general nature and is not a substitute for legal advice. The Environmental Law Centre encourages individuals to seek specific advice on matters of concern and not to rely solely on the information in this document.

## **The Environmental Law Centre**

The Environmental Law Centre (Alberta) Society is a registered charitable organization that was incorporated in 1982 to provide Albertans with an objective source of information on environmental and natural resources law. The Centre, which is staffed by four full-time lawyers, a librarian and a small support staff, provides services in environmental law education, assistance, research and law reform. The Centre maintains an extensive library and online catalogue of environmental law materials that is accessible by the public free of charge.

## **ENVIRONMENTAL LAW CENTRE**



Funding for the Environmental Law Centre is provided 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 Centre's objectives.

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