



American Friends of Canadian Land Trusts

Conservation Lands Program

Background

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

In the past, U.S. taxpayers who wished to permanently protect their special Canadian properties by donating the land or a conservation easement to a Canadian conservation organization were frustrated by major tax obstacles. 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 described in this overview.

AF's Partnership Model

AF's board recognizes that the organization's mission is best achieved by supporting the land conservation vision and activities of Canadian conservation entities. Each of our conservation projects is therefore initiated and led by a Canadian partner, referred to as a Grantee. Land trusts, other types of conservation organizations and government agencies can become Grantees. We rely on our partners' knowledge of their region and its conservation values to determine priority projects. Our partners work with landowners to craft appropriate conservation agreements and to arrange the terms of gifts of land. Our Canadian conservation partners are responsible for all land procurement activities for the projects they initiate, although we work collaboratively.

Because of their expertise and proximity to the properties, our partners also manage land and monitor and enforce the terms of easements donated to AF. All costs related to both procurement and stewardship are the responsibility of the sponsoring Canadian conservation organization and/or donor. AF supports the Canadian partner and landowner(s) on each project, 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 for permanent stewardship. The donations, however, must be made directly to AF because Internal Revenue Service (IRS) regulations prevent donors (U.S. taxpayers) from receiving tax deductions for gifts of land or easements to Canadian organizations.

Similarly, the donor's tax deduction would be jeopardized by any guarantees made with respect to AF's subsequent transfer of donated property to the Canadian partner organization. Although IRS rules prevent donors from making their gift contingent upon the land/easement being transferred to the Canadian partner organization, they are encouraged to make their wishes known. To protect the donor's charitable deduction, the land/easement donation and the land/easement transfer are two entirely separate processes. The AF Board must make an independent decision regarding a transfer of the land or easement in the future, based on a request from the Canadian partner.

Major Steps for Cross-Border Land Conservation Projects

Qualify as a Land Grantee

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

Propose a Land Conservation Project to AF

Once qualified as an AF Land Grantee, your organization can propose 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 landowner, and for the landowner's financial and legal advisors to use. We will do our best to support you, the donor and her advisors throughout the process.

The Three Phases of a Land Conservation Project

- **Phase I Inquiry and Feasibility Assessment**: 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. In this document you provide rationale for the project, explain how it fits within your organization's conservation priorities, and supply key information about the land, the donor, and the proposed project so that AF's board can make an informed decision about whether to proceed with the project. AF provides template forms and examples of successful Phase I proposals.

- **Phase II Due Diligence:** After AF approves the project in principal we will develop a mutually acceptable Procurement and Management Agreement between AF and your organization. The agreement confirms each partner's roles and responsibilities for the project and gives AF assurance that your organization is committed to caring for the property, or monitoring and enforcing the easement, if AF accepts the proposed gift. In addition, the Agreement establishes the agreed upon mechanisms for paying project and management costs.

AF provides a template Procurement and Management Agreement, a checklist for Phase II activities and templates for the baseline study template, environmental assessment and a cross-border conservation easement. 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 dispositions of land. (Please refer to Special Requirements for Conservation Easements, on page 5, for more detailed information on partial interest donations.)

Phase III Closing: Once all the phase II 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's legal counsel, Program Coordinator and members of its board help your organization and the donor to structure 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 Sandra Tassel, AF's Program Coordinator. You can also find many of the documents described above, together with other more detailed materials, at www.afoclt.org. 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.

What does it cost?

AF, its partners and donors benefit from reduced cost and pro-bono counsel from some of the most experienced conservation and real estate attorneys in the US and Canada. Transaction assistance is provided by AF's part time Program Coordinator and its engaged, knowledgeable board. Transaction fees help cover the costs of AF's necessary legal, project management, accounting and the extensive administrative work directly connected to cross border land and easement donations and all of the related tax documentation.

The cost for fee title projects is \$10,000 and \$15,000 for conservation easements, due to their additional complexity. The fees are divided between the three transaction phases (i.e. 20% for Phase I, 50% for Phase II and the final 30% for Phase III). If a transaction is not completed for some reason, only the fees already paid will be due. However AF cannot refund fees. The partner organization, the donor or an interested third party or philanthropy can pay the fees.

Land grantees receive initial project consultation with AF's Program Coordinator to help launch new gifts. Subsequent consultation is available to any of the project participants on a fee-for-service basis to offset AF's expenses. This arrangement was instituted because landowners have taken advantage of AF's unique expertise but did not move forward with the proposed donation. AF has neither the financial reserves nor personnel to provide this free service.

We hope the fee-for-service arrangement will give all the parties the incentive to prepare and submit the Phase I application as quickly as possible. Once the transaction is officially launched in that manner, the transaction fees include all the above-described assistance for the partner, donor and professional advisors.

Please note that the fees are based on a normal level of project complexity. A project requiring AF to obtain extensive legal, estate tax or other professional advice and guidance, may result in additional fees.

The partner and the donor are responsible for the costs of their own legal, tax and financial advice.

Refer to AF's Land Donation Process Summary for more detail on the costs and timeframes associated with AF's cross-border land and easement donations.

We look forward to working with you on your organization's cross-border conservation efforts.

For Additional Information: Get in touch with AF!

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

Mineral Development Risk

To meet U.S. tax law requirements, gifts of “partial interest in land” including conservation easements, covenants and gifts of remainder interest in a reserved life estate, must be proven to be free from any risk of mineral development. As part of the due diligence, your organization will have to secure a special letter/report from a mining expert to meet this Internal Revenue Service requirement. Please call us for more information.

AF’s Eligibility to Hold Conservation Easements in Your Province

Before completing our first conservation easement project in each province, we will work with the partner organization to ensure that AF is eligible to hold easements. If your project is the first cross border conservation easement in your province, we will need your help securing whatever approval or designation is required prior to accepting the gift.

IRS Status Requirement to Accept Transfer from AF

To meet tax deductibility requirements in the U.S. 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, it must obtain IRS recognition as a “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. You will need to apply to the IRS for this designation and prove that your organization meets the requirements. Go to www.afoclt.org and look in the Resources section for the factsheet on applying for this IRS designation.