



Agriculture and
Agri-Food Canada

Agriculture et
Agroalimentaire Canada



Summary of Canadian experience with conservation easements and their potential application to agri-environmental policy

© Her Majesty the Queen in Right of Canada, represented by the Minister of Agriculture and Agri-food Canada (2011).

Catalogue No. A125-17/2011E-PDF

ISBN 978-1-100-19321-2

AAFC No. 11627E

**Summary of Canadian Experience with Conservation Easements
and their Potential Application to Agri-Environmental Policy**

Jan 22, 2008

Kimberly Good and Sue Michalsky
Good AgVentures Inc.

© HER MAJESTY THE QUEEN IN RIGHT OF CANADA, 2008 as represented by the Minister of
Agriculture and Agri-Food Canada.

No portion of this document may be reprinted, adapted, distributed or transmitted in any form
without permission. Any policy views, whether explicitly stated, inferred or interpreted from the
contents of this document, should not be represented as reflecting the views of Agriculture and
Agri-Food Canada.

Executive Summary

Well managed agricultural landscapes contribute significantly to Canada's societal well being. There are many pressures that may diminish the capability of Canada's agricultural landscape and supporting ecosystem services. The current market system does not fully recognize the benefits of good agricultural stewardship and may not always encourage sustainable land use choices.

This paper examines the characteristics and current uses of conservation easements (CEs) in Canada and considers their potential as an agri-environmental policy tool.

The first section provides a brief overview of what CEs are, summarizes the main types of CEs and presents a review of enabling legislation in Canada. The second section describes and analyzes the results of a survey of the main conservation organizations currently delivering CE programs. The third section assesses the potential utility and application of CEs to address agri-environmental objectives.

In general CEs are written agreements negotiated by a private landowner and a conservation organization to limit specific future uses of a property. There are three ways a land trust can acquire a conservation easement: (1) as a charitable gift, (2) as a purchase, or (3) as a combination of (1) and (2) through a process called split receipting.

The main purpose of CEs defined in provincial legislation is to conserve, protect, restore or enhance natural landscapes or landscape features including those found in agricultural areas (e.g. wetlands, riparian areas, woodlands and grasslands). All CE legislation prescribes that CEs be held by a qualified or eligible organization (this includes both government and non-government agencies). CEs must be in force for a negotiated period that is often "perpetuity" but can be shorter; they can be terminated under extenuating or unforeseen circumstances. In general, CEs impose varying limits on current and future land uses; some may allow grazing of native rangelands or cultivation of high capability agricultural lands to continue. Legislation in Ontario, New Brunswick and Saskatchewan specifically name the conservation of soil or agricultural lands among CE objectives and may be used to limit uses that threaten fragile or high capability agricultural soils. Further study is needed to determine if legislation in other provincial jurisdictions may be applied or amended for similar purposes.

Twenty four conservation organizations across Canada were interviewed to gather information about how CEs have been used to date in Canada. Survey results indicate:

1. At least 1,359 CEs have been registered by recipient agencies on 318,807 acres of private land in Canada. Approximately 45% of these are donated CEs, 54% are paid, and 1% is split receipted. Many of these occur within agricultural regions.
2. The majority of recipient agencies surveyed (>50%) have used CEs primarily as a biodiversity conservation tool. Water source/riparian protection (38% of respondents) and protection of working agricultural landscapes (<2% of respondents) were the other two main objectives cited by the CE recipients surveyed.
3. Negotiated land use restrictions included (1) no use or set aside, (2) no clear, no break, no drain, (3) restricted agricultural/forestry use and (4) restricted development. Most restrictions negotiated by surveyed agencies fall into the "no

- clear, no break no drain” and “restricted agricultural/forestry use” categories; 83% of recipient agencies allowed some form of agriculture on at least some of their conservation easement land. The most common forms of agriculture allowed are grazing and haying. In general the more restrictive the conservation easement, the higher its appraised value.
4. Overwhelmingly, the primary factor that agencies said limited the securement of additional CEs was funding for delivery staff to negotiate and monitor them. Landowner perceptions of CEs and related concerns over potential long term impacts were cited by some (16%) organizations as well.
 5. Factors perceived to limit uptake of CE's were the economic circumstances of the landowner and low perceived benefits conferred to donors of CEs, as well as misinformation and lack of landowner awareness about this instrument.
 6. Most agencies (71%) engage in education and awareness activities that seem to have a very positive influence on landowner acceptance of CE's. However some organizations reported that in specific geographic areas with high CE activity landowners had reached an “awareness threshold”. These programs were locally oversubscribed and additional awareness effort in these areas would not be worthwhile. Even when awareness and understanding is high it is unlikely that all landowners will be willing to participate in a CE for a variety of reasons.
 7. Agency costs to administer CEs include (1) securement costs and staff time to negotiate, appraise and register the CE, (2) monitoring costs to ensure the conditions of the CE agreement are upheld, and to maintain landowner relationships and (3) potential costs for legal defense. There was significant variation in how agencies tracked and recorded these amounts and in the cost of professional services across Canada. Reported administration costs of an individual CE ranged from \$2000 to \$120,000. The average amount is estimated to be approximately \$19,000 per CE.
 8. CE delivery agents have refined their methods to more efficiently utilize this tool. CE agreements have been made simpler and easier to understand; better reporting and monitoring templates have been developed; paid CEs have been introduced; better provisions have been made for long term monitoring and potential legal defense costs; and CEs have been utilized for a wider range of uses. A number of adaptations of CEs have also begun to emerge or are being considered by surveyed agencies, including easements targeted at agricultural land protection, transferable development credits, purchase of development credit programs and transferable tax credit programs.

The results of this review suggest that expanded use of conservation easements by governments independently or in partnership with other agencies may further encourage, recognize and reward agricultural land stewardship and the provision of public Ecological Goods & Services (EG&S) benefits. Adaptation and amendment of existing practices and legislation may further enhance the capacity of conservation agencies to deliver CEs, the acceptance of CEs by landowners and the suitability of this instrument for conservation of fragile or high capability agricultural lands. Further investigation of CE variants such as agricultural easements, an agricultural gifts program, transferable development credit programs, purchase of development credit programs, and a transferable tax credit program may offer other alternatives that help encourage greater protection of EG&S benefits from agricultural lands, while recognizing the stewardship contributions of agricultural producers.

Table of Contents

Executive Summary	3
Table of Contents.....	5
List of Tables	6
List of Figures	6
Introduction	7
I. Conservation Easements.....	7
A. What is a Conservation Easement?	7
B. Types of Conservation Easements.....	8
1) Donated Conservation Easements	8
2) Paid Conservation Easements.....	9
3) Split Receipt Conservation Easements.....	10
C. Key Features of Conservation Easements across Canada.....	10
II. Use of Conservation Easements in Canada.....	14
A. Survey of Conservation Easement Delivery Agencies	14
B. Survey Results – Uses and Key Characteristics of Conservation Easement Programs of Surveyed Conservation Agencies	15
1) Number, Type and Area of Conservation Easements by Province	15
a) Conservation Easements Registered Since Enactment of Legislation	18
2) Main Purposes of Conservation Easements by Organization Surveyed	19
3) Common Land Use Restrictions	21
4) Factors Limiting Conservation Easement Delivery	23
5) Factors Limiting Uptake of Conservation Easements by Landowners	24
6) Influence of Education / Communications on Conservation Easement Uptake..	24
7) Administrative Costs of Conservation Easement Registration	25
8) Lessons Learned by Conservation Easement Delivery Agencies	27
a) Improvements to conservation easement agreements and stewardship protocols.....	27
b) Introduction of Paid Conservation Easements.....	27
c) Recognition of Long-term Monitoring Requirements and Costs	28
d) Conservation Easement Use by a Provincial Government.....	28
9) Future Possibilities – Adaptations of Conservation Easements	29
III. Conservation Easements – A Tool to Conserve Natural Capital and Sustain Ecological Goods and Services from Agricultural Landscapes?	29
A. Apparent Strengths and Limitations of Conservation Easements as an Agri- Environmental Conservation Tool.....	29
B. Conclusion.....	32
IV. References	34
APPENDIX A: Valuation of Conservation Easements	35
APPENDIX B: Criteria for Ecogift Program.....	39
APPENDIX C: Questionnaire for Land Trusts.....	40
APPENDIX D: Education / Communications example - Saving agricultural land for growing food, two Nova Scotia farms protected by conservation easements.....	41
APPENDIX E: Letter to the Honourable James Flaherty from Ontario Farmland Trust re. Agricultural Gifts Program	43

List of Tables

Table 1: Enabling conservation easement legislation and purpose of legislation by province*	12
Table 2: Key features of conservation easements by province	13
Table 3: Conservation Easement Donations – Ecological Gifts Program to March 31, 2007	15
Table 4: Types and numbers of conservation easements by organization.....	17
Table 5: Number of conservation easements completed annually by organization.....	18
Table 6: Purpose for conservation easements by organization	20
Table 7: Average administrative costs and descriptions by organization	26

List of Figures

Figure 1: Cumulative Conservation Easements Registered in Canada.....	19
---	----

Summary of Canadian Experience with Conservation Easements and their Potential Application to Agri-Environmental Policy

Introduction

Well managed agricultural landscapes contribute significantly to Canada's societal well being. They provide the foundation to farming businesses that produce high quality, marketable commodities and sustain natural functions that maintain soil fertility, clean water and a stable climate. To society, well managed agricultural land not only provides food, fibre, and potentially, fuel, pharmaceuticals and biodegradable plastics, but open space and ecosystem benefits such as air and water purification and biodiversity. As well, agriculture contributes between 6 and 8% annually to Canada's GDP.

There are many pressures on Canada's agricultural landscapes – pressures that may diminish the agricultural capability of the land and supporting ecosystem services. Competing land uses, coupled with low commodity prices and high input costs may cause farmers to make short term decisions that are detrimental to long term ecological health and profitability of the agricultural operation. The current market system does not fully recognize the benefits provided from well managed agricultural land and may not encourage sustainable land use choices.

Agriculture and Agri-Food Canada (AAFC) and its partners have long recognized that sustainable land management practices provide benefits to farmers and society. Agricultural Policy Framework programs and other initiatives currently provide financial assistance to farmers to adopt environmentally beneficial management practices. In an effort to advance progress toward sustainable agricultural objectives, other options are being examined, including the expansion of conservation easements (CEs), and the potential introduction of agricultural easements.

This analysis examines the characteristics and current use of CEs in Canada and considers their potential as an agri-environmental policy tool to encourage, recognize and reward agricultural land stewardship and the provision of public ecological goods and services (EG&S) benefits.

This paper is divided into three sections. The first section provides a brief overview of what CEs are, summarizes the main types of CEs and presents a review of enabling legislation in Canada. The second section describes and analyzes the results of a survey of the main conservation organizations currently delivering CE programs. The third section assesses the potential utility and application of CEs to address agri-environmental objectives.

I. Conservation Easements

A. What is a Conservation Easement?

Easements, covenants and servitudes are instruments by which a landowner grants to another party, rights with respect to that landowner's land (Atkins et al, 2004). This is done through a written agreement that is negotiated by a landowner and a qualified organization and registered on the land title. A qualified organization is generally a "land trust" or "conservancy" that has the acquisition of land or interests in land for the purpose of conservation as one of their core activities (Greenaway, 2003). Conservation

organization, conservation agency, land trust, recipient agency, holder or grantee will be used throughout this paper to refer to organizations that hold CEs including all levels of government who are also able to register CEs.

To fully understand how CEs function, it is important to consider landownership as a bundle of rights. These rights allow the landowner to carry out certain activities (e.g. cultivate the soil, graze the grass, cut down the trees, build a house, subdivide, etc.). By signing a CE the landowner voluntarily gives up some of those rights for him or herself and for future owners for as long as the CE is in effect.

For the sake of simplicity, the term conservation easement (CE) or easement will be used throughout this paper to refer to conservation agreements, covenants and servitudes except where specific provincial legislation is being discussed.

B. Types of Conservation Easements

To comply with existing legislation, CEs must be registered in favour of a conservation organization or government agency identified in legislation. There are three ways a land trust can acquire a CE from a landowner: (1) they can accept it as a charitable gift, (2) they can purchase a CE, or (3) they may purchase the easement at a reduced price and accept the remaining value of the easement as a charitable gift – this is called split receipting. On occasion landowners may enter into a CE and elect not to receive a payment or charitable donation receipt. Regardless of whether a CE is donated or sold the purpose of the agreement is similar - the landowner gives up specific land use rights to conserve certain natural features or characteristics of the affected land.

To determine the monetary value of a CE an Appraisal Institute of Canada certified appraiser should, and in some cases (i.e. Ecogift donations) must be used. The “before and after” method is the most common method of valuation. Using this approach the value of the CE is estimated as the difference between the value of the land with and without the CE. This value can range significantly from 10% of the fair market value of the land to 50% or greater depending on what rights the landowner is giving up (e.g. the degree of land use restriction – Section II, 3). A more detailed description of valuation methods is provided in Appendix A.

1) Donated Conservation Easements

Landowners who donate a CE to a qualified recipient are eligible for a charitable donations tax credit (for individuals) or a charitable donations deduction (for corporations) for the value of that gift. CE donations can take one of two forms:

1. Certified Ecological Gift - An application is submitted by the landowner or by a land trust on the landowner's behalf to have the land certified as Ecologically Sensitive in order to participate in the Ecological Gifts Program administered by Environment Canada. The Ecological Gifts Program provides the easement donor with preferential tax treatment including a reduction in the capital gains inclusion rate to zero and the ability to carry forward unused portions of the donor's gift for up to five years. Unlike other charitable gifts, there is no limit to the total value of Ecological Gift donations in a given year eligible for the deduction or credit. Any future changes to an Ecogift certified easement must be approved, in advance, by

the federal Minister of Environment (Environment Canada 2003). For more details on the Eco-Gift Program see Appendix B.

2. Not a Certified Ecological Gift – If a landowner chooses not to apply for Ecogift certification or a property is not eligible to be certified as ecologically sensitive, a CE can still be granted to a qualified organization. The value of the easement would be established using the same valuation techniques as one that was to be certified and a tax receipt would be issued. The gift is treated, for income tax purposes, like any other charitable donation (i.e. there would be no beneficial tax treatment over any other kind of charitable gift such as a cash donation).

The main difference between an Ecogift certified and a non-Ecogift certified CE donation is that the donor of the non-Ecogift certified easement would not receive a capital gains reduction and would not enjoy the same level of income tax benefits as a result of the donation.

2) Paid Conservation Easements

On some landscapes, in particular agricultural areas where landowners derive a majority of their income from the land and / or where the benefit of a tax receipt is perceived to be low, paid CEs have been offered by some recipient agencies to encourage greater enrollment.

Just as with a donated CE, the landowner and the conservation agency negotiate an agreement that is suitable to both parties. The CE is valued through an appraisal (see Appendix A for details). As discussed in Appendix B, different conservation organizations have different policies regarding how the actual purchase price of CEs is established. The most common way is to negotiate a sale price with the landowner up to a pre-determined maximum. Maximums are generally established as:

1. A percentage of the fair market value of the land (i.e. the “before” price) or,
2. A percentage of the CE value (i.e. the difference between the “before and after” value)

On other occasions land trusts will set a price for certain geographic areas and there is no negotiation. The main difference between a paid CE and a donated CE is that upon registering a paid CE the landowner receives a payment instead of a charitable donation receipt.

3) Split Receipt Conservation Easements

Another option for landowners and conservation organizations that are negotiating an easement is to agree on a combined payment and donation that together add up to the appraised value of the CE. This is called “split receipting”. Split receipting occurs when the recipient agency issues a tax receipt for the difference between the total value of the gift and any monetary consideration (up to 80% of the value of the gift) the landowner has received for the CE. A key advantage of split receipting is that landowners who may be unable to make an outright donation of a CE for financial reasons may donate what they can afford and receive a payment for the remainder of the CE value. The Ecological Gifts Program can issue Ecogift certificates for split receipt donations. Split receipting provides another option and more flexibility in negotiating easement agreements between landowners and recipient agencies, and thus has the potential to encourage better enrollment.

C. Key Features of Conservation Easements across Canada

Until the mid 1990's the only way to perpetually conserve private land in Canada was essentially through a government agency or conservation organization taking ownership and promising to protect it. In 1995 the first CE legislation in Canada was introduced in Ontario, Alberta and British Columbia. Table 1 outlines the provincial Acts that enable CEs and the purpose of the legislation in each province.

This section compares and contrasts the provincial Acts to illustrate the features and potential utility of the existing legislation for agri-environmental program purposes. In all provinces a CE “runs with the land” and binds successive landowners to the requirements and restrictions of the easement for as long as it is in force.

The basic purpose of CE legislation is essentially the same across Canada – to conserve, protect, restore or enhance natural landscapes or features of the land. This includes natural land features in agricultural landscapes such as wetlands, riparian areas, woodlands and grasslands; further study is needed to determine if current CE legislation might likewise be used to conserve other forms of agricultural natural capital such as cultivated land. In Ontario, conservation of agricultural land is specifically mentioned. New Brunswick and Saskatchewan legislation name the conservation and protection of soil, water and air and therefore may potentially be used to conserve high capability agricultural lands in these jurisdictions, in addition to other forms of natural capital.

Other key features of provincial legislation are summarized in Table 2. It is useful to understand similarities and differences within these categories when considering CEs as an option for inclusion in broader regional or national programs.

1) Recipient Agencies: In general, provincial governments and designated non-government organizations are eligible to hold CEs in all Canadian provinces (see “Holders” in Table 2). The federal Crown is expressly listed as a possible holder in Saskatchewan, Manitoba, Ontario, New Brunswick and Nova Scotia. It is also possible the federal Crown could hold easements in British Columbia as this legislation names “the Crown” as a holder but does not differentiate between the federal or provincial crown.

Recipient agencies must also be included on Environment Canada's list of Eligible Charities in each province in order for donated CEs to satisfy Ecogift requirements discussed above (www.cws-scf.ec.gc.ca/egp-pde/default.asp?lang=en&n=BEBC00B5).

- 2) Notice Requirements: In some jurisdictions, CE holders must notify certain parties of the impending CE. This is a consideration for the potential use of CEs as a tool to conserve natural capital because it involves additional steps and may increase the transaction time and therefore costs associated with registration and securing of CEs in some jurisdictions. Four provinces require notification of some sort. Notification in Alberta and Quebec is advisory only but in Saskatchewan and Manitoba those who object to the CE can file their concerns and attempt to block a CE from being registered.
- 3) Duration (term) of CE Agreements: In practice CEs are usually perpetual agreements registered on the land title. However as shown in Table 2, most provincial legislation also allows "term" easements. Thus CE agreements may be negotiated and remain in force for "perpetuity" or a shorter length of time as allowed in the legislation and if such a term meets the conservation objectives of the recipient agency.
- 4) Provision for termination: The premise of CEs is generally that they are binding on the landowner and his or her successors. However provincial legislation allows for termination of CE agreements in extenuating circumstances not foreseen at the time of negotiation. "Termination" in Table 2 refers to the process by which a CE may be removed under provincial legislation. Where the Minister or the court can terminate a CE it is generally in response to the landowner, the land trust or another interested party making a request to terminate the agreement. In British Columbia the holder can terminate the agreement for their own reasons without petitioning the courts. Termination of an agreement may have tax implications for the landowner and particularly holder of the easement if it was originally donated through the Ecogift Program.
- 5) Assignment of CE to another holder: Assignment provisions are made in all provinces in case a CE holder can no longer hold an easement. "Assignment" in Table 2 specifies who a holder may assign an existing easement to. In general, "assignment" provisions allow some longer term flexibility for agencies that hold CEs should they become unable to live up to their obligations contained in the agreement.

Table 1: Enabling conservation easement legislation and purpose of legislation by province*

Province	Enabling Legislation	Name of Instrument	Purpose
British Columbia	Land Titles Act (amended in 1995)	conservation covenants	<ul style="list-style-type: none"> To protect, preserve, conserve, maintain, enhance, restore, or keep in its natural state any natural, historical, heritage, cultural, scientific, architectural, environmental, wildlife or plant life value on the land under the covenant
Alberta	Environmental Protection and Enhancement Act (amended 1995)	conservation easements	<ul style="list-style-type: none"> The protection, conservation, and enhancement of the environment including biodiversity The protection and enhancement of natural scenic or aesthetic values Where consistent with either of the above, for recreational, open space or environmental educational use or use for research or scientific studies of natural ecosystems
Saskatchewan	Conservation Easements Act (1996)	conservation easements	<ul style="list-style-type: none"> The protection, enhancement or restoration of natural ecosystems, wildlife habitat or habitat of rare, threatened or endangered plant or animal species The retention of significant botanical, zoological, geological, morphological, historical, archeological or palaeontological features respecting land The conservation of soil, water and air quality
Manitoba	Conservation Agreements Act (1997)	conservation agreements	<ul style="list-style-type: none"> The protection and enhancement of natural ecosystems, wildlife or fisheries habitat, and plant or animal species
Ontario	Conservation Lands Act (1995, amended in 2005 to include agricultural land)	conservation easements or covenants	<ul style="list-style-type: none"> For the conservation, maintenance, restoration or enhancement of all or a portion of the land or the wildlife on the land For the protection of water quality and quantity, including protection of drinking water sources For watershed protection and management For the conservation, preservation or protection of the land for agricultural purposes For the purposes prescribed by the regulations made under this Act Or for access to the land for the purposes referred to above
Quebec	Natural Heritage Conservation Act (2002) or Quebec Civil Code	Conservation agreement (once land is recognized as a "nature reserve" otherwise a civil servitude)	<ul style="list-style-type: none"> To safeguard the character, diversity and integrity of Quebec's natural heritage through measures to protect its biological diversity and the life-sustaining elements of natural settings
New Brunswick	Conservation Easements Act (1998)	conservation easements	<ul style="list-style-type: none"> The conservation of ecologically sensitive land The protection, enhancement or restoration of natural ecosystems Protection or restoration of wildlife habitat or wildlife The conservation of habitat of rare or endangered plant or animal species The conservation or protection of soil, air, land or water The conservation of significant biological, morphological, geological or palaeontological features The conservation of culturally important, archaeologically important or scenically important places The protection or use of land for outdoor recreation, public education And any other purpose described by regulation
Nova Scotia	Conservation Easements Act (2001)	conservation easements	<ul style="list-style-type: none"> Protecting, restoring, or enhancing land that contains natural ecosystems or constitutes the habitat of rare, threatened or endangered plant or animal species Contains outstanding botanical, zoological, geological, morphological or palaeontological features Exhibits exceptional and diversified scenery Provides a haven for concentrations of birds and animals Provides opportunities for scientific or educational programs in aspects of the natural environment Is representative of the ecosystems, landforms or landscapes of the Province, or meets any purpose described by the regulations
Prince Edward Island	Wildlife Conservation Act (1998) in addition to older Natural Areas Protection Act	conservation easements or covenants	<ul style="list-style-type: none"> The protection, enhancement, or restoration of natural ecosystems Wildlife habitat or habitat of rare, threatened or endangered plant or animal species The retention of significant botanical, zoological, geological or morphological features of land
Newfoundland and Labrador	No specific conservation easement legislation, but the Heritage Resources Act is broad enough it may be used to conserve land	easement or covenant	<ul style="list-style-type: none"> "Provincial historic site" declared by the Minister and which can be a parcel of land "Registered historic site" declared by the Minister and which can be a parcel of land "Significant palaeontological site" declared by the Minister as of palaeontological significance

* Yukon is the only territory that has conservation easement legislation

(adapted from Denhez 2003 using Atkins et al 2004)

Table 2: Key features of conservation easements by province

Province	Ministry Responsible	Holders	Notice Required	Term	Termination	Assignment
British Columbia	Land Title and Survey Authority of British Columbia	<ul style="list-style-type: none"> • Crown • Municipal • NGO 	No	Not described	<ul style="list-style-type: none"> • Written agreement • By holder • By court 	<ul style="list-style-type: none"> • Someone named in agreement • Someone named by the Minister
Alberta	Environment	<ul style="list-style-type: none"> • Province • Municipal • NGO 	Yes – 60 days	Term or perpetuity	<ul style="list-style-type: none"> • Written agreement • By Minister 	<ul style="list-style-type: none"> • Eligible holder as described in the act or regulations
Saskatchewan	Environment	<ul style="list-style-type: none"> • Federal • Province • Municipal • NGO • Any person described in regulations 	Yes – 60 days	Term or perpetuity	<ul style="list-style-type: none"> • Written agreement • By court 	<ul style="list-style-type: none"> • Eligible holder as described in the act or regulations
Manitoba	Conservation	<ul style="list-style-type: none"> • Federal • Province • Municipal • NGO • Conservation district 	Yes – 45 days	Term or perpetuity	<ul style="list-style-type: none"> • Written agreement • By court 	<ul style="list-style-type: none"> • May be specified in the agreement
Ontario	Natural Resources	<ul style="list-style-type: none"> • Federal • Province • Municipal • Indian Band • NGO • American NGO 	No	Term as described in legislation including perpetuity	<ul style="list-style-type: none"> • By Minister 	<ul style="list-style-type: none"> • Eligible holder
Quebec		<ul style="list-style-type: none"> • Province • NGO 	Yes	Term of no less than 25 years or Perpetuity	<ul style="list-style-type: none"> • Not specifically described • Nature Reserve recognition can be removed by Minister 	<ul style="list-style-type: none"> • Not described in Act
New Brunswick	Natural Resources	<ul style="list-style-type: none"> • Federal • Province • Municipal • NGO 	No	Term or perpetuity	<ul style="list-style-type: none"> • Written agreement • By court 	<ul style="list-style-type: none"> • Eligible holder
Nova Scotia	Natural Resources	<ul style="list-style-type: none"> • Federal • Province • Municipal • NGO 	No	Term or perpetuity	<ul style="list-style-type: none"> • Written agreement 	<ul style="list-style-type: none"> • Eligible body
Prince Edward Island		<ul style="list-style-type: none"> • Province • Any person 	No	Term or perpetuity	<ul style="list-style-type: none"> • Not described in Act 	<ul style="list-style-type: none"> • Not described in Act
Newfoundland and Labrador		<ul style="list-style-type: none"> • Province • Municipal • NGO – historical • Heritage Foundation 	No	Not described in Act	<ul style="list-style-type: none"> • Written agreement 	<ul style="list-style-type: none"> • Not described in Act

II. Use of Conservation Easements in Canada

There are currently 170¹ organizations qualified to hold Ecogift certified CEs (www.cws-scf.ec.gc.ca/egp-pde/default.asp?lang=en&n=BEBC00B5) in Canada. Six of these are national in scope. Of the six nationally qualified organizations only two endeavor to hold CEs: Ducks Unlimited Canada and the Nature Conservancy of Canada. British Columbia, Ontario and Quebec have the highest number of land trusts or conservation agencies. Only half to two thirds of qualified regional organizations actually hold CEs, those that do not have either not entered into a CE to date or prefer to use their qualification to accept donated land instead of CEs. No comprehensive list of all organizations that hold CEs in Canada could be found.

A. Survey of Conservation Easement Delivery Agencies

A survey was designed to gather data on the objectives and use of CEs across Canada. The results of the survey are intended to provide AAFC and its provincial partners an indication of the current application and use of CEs in Canada, and a summary of lessons learned by other organizations engaged in the use of this tool.

Specific objectives were to:

1. Estimate the number, type and area of CEs registered in Canada and by province and consider the number registered since enactment of legislation,
2. Understand the objectives of individual agency CE programs,
3. Review common land use restrictions and consider the impact on the value of associated CEs,
4. Consider factors limiting further CE delivery by conservation organizations
5. Consider factors limiting uptake of CEs by landowners
6. Consider the influence of education / communications on the uptake of CEs by landowners
7. Assess the administration costs typically incurred by conservation agencies to negotiate and register donated and paid CEs, and to
8. Investigate the lessons learned about CE programming by the conservation organizations surveyed.

The survey questionnaire is presented in Appendix C.

In order to collect as much information about CE use in Canada as efficiently as possible it was determined that the two most active national land conservation organizations (Nature Conservancy of Canada and Ducks Unlimited Canada) and one or two regional organizations from each province would be interviewed. The original list was determined with input from the Canadian Land Trust Alliance as well as the land trust alliances in British Columbia, Alberta, and Ontario. After interviews began, initially surveyed organizations provided the names of other agencies active in CEs with a particular interest in paid CEs and/or agricultural landscapes.

Of the 27 land trusts or regional offices of national land trusts identified, 24 responded (Table 4). Of the three that did not respond one is in Newfoundland and Labrador which does not have specific CE legislation to use, another is an inactive program in Prince

¹ Although national organizations may operate in multiple regions, they have been counted one time only in this total.

Edward Island, and the third, a non-government organization in New Brunswick, could not be reached.

Data collected from Ducks Unlimited Canada and the Nature Conservancy of Canada is summarized at a regional level since differences in provincial legislation and regional agency objectives caused significant differences in CE use across the country.

B. Survey Results – Uses and Key Characteristics of Conservation Easement Programs of Surveyed Conservation Agencies

1) Number, Type and Area of Conservation Easements by Province

Table 4 presents the number, type and area of CEs registered by surveyed organizations in each province. By cross referencing CEs identified in the survey and Environment Canada lists of ecological gifts in selected provinces, it is estimated that between 80 - 90% of CEs in Canada have been captured in the survey. A number of small, locally based, land trusts and municipalities that influence quite specific geographies are believed to hold the remaining 10-20% of CEs in Canada; these are likely donated easements since these agencies either do not want to pay for CEs or lack the financial capacity to pay for CEs.

No comprehensive record of donated and paid CEs in Canada could be found in the literature or through contact with conservation organizations including Environment Canada. However the land trust community in Canada is relatively small and fairly well connected and it is estimated that the survey captured the vast majority of paid CEs and 80-90% of donated CEs. This study identified 318,807 acres under easement (donated, paid, and split receipted) among surveyed organizations. When extrapolated across known recipient agencies, the current area of CE lands in Canada is estimated at between 350,688 and 382,568 acres.

Every organization interviewed has or is willing to accept donated CEs if the land fits their organizational criteria. Environment Canada's Ecological Gift Program is, or has been used in all provinces by at least one organization. From February 1995 to March 2007, 259 CEs have been certified as Ecologically Sensitive (for the provincial breakdown see Table 3).

Table 3: Conservation Easement Donations – Ecological Gifts Program to March 31, 2007

Province	# of gifts	\$ Value	Average \$	Minimum	Maximum
British Columbia	27	\$19,328,000.00	\$715,851.85	\$15,000.00	\$6,612,000.00
Alberta	76	\$35,388,307.00	\$465,635.62	\$20,000.00	\$6,320,000.00
Saskatchewan	64	\$624,139.00	\$9,752.17	\$560.00	\$231,700.00
Manitoba	3	\$120,700.00	\$40,233.33	\$10,000.00	\$100,000.00
Ontario	75	\$12,762,124.00	\$170,161.65	\$11,000.00	\$1,676,500.00
Quebec	3	\$185,800.00	\$61,933.33	\$39,300.00	\$103,500.00
Nova Brunswick	5	\$1,236,250.00	\$247,250.00	\$25,500.00	\$632,000.00
Nova Scotia	6	\$1,557,564.00	\$259,594.00	\$14,600.00	\$788,924.00
	259	\$71,202,884.00	\$274,914.61		

Land trusts have paid for CEs in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Nova Scotia, with a high majority occurring on the prairies. Manitoba Habitat Heritage Corporation, Ducks Unlimited Canada and the Nature Conservancy of Canada have purchased 99% of the paid CEs in Canada, although Ducks Unlimited Canada and the Nature Conservancy of Canada do not purchase CEs in all provinces.

Table 4: Types and numbers of conservation easements by organization

Agencies [†]	# of CE's (acres)	Donated	Paid	Split Receipt	% of CE's on Ag Land ^a
British Columbia					
Ducks Unlimited Canada	3 (240)	1 (40)	2 (200)	0	100
Nature Conservancy of Canada	19 (10,387)	18 (9,967)	1 (420)	0	21
The Nature Trust	15 (1,314)	15 (1,314)	0	0	26
The Land Conservancy	200 (5,000)	200 (5,000)	0	0	<5
TOTALS	237 (16,941)	234 (16,321)	3 (640)	0	
Alberta					
Ducks Unlimited Canada	46 (18,479) ^b	12 (2,245)	31 (2,734)	3 (13,500) ^b	95
Nature Conservancy of Canada	83 (61,914) ^b	56 (29,392) ^c	21 (17,895)	6 (14,627) ^b	90
Alberta Conservation Association	6 (2,926)	6 (2,926)	0	0	0
Southern Alberta Land Trust Society	16 (9,000)	16 (9,000)	0	0	100
TOTALS	151 (78,819)^b	90 (43,563)	52 (20,629)	9 (14,627)^b	
Saskatchewan					
Ducks Unlimited Canada	192 (44,400)	6 (391)	186 (44,009)	0	97.5
Nature Conservancy of Canada	113 (74,435)	14 (3,895)	97 (70,024)	2 (516)	100
Saskatchewan Agriculture and Food	108 (10,079)	108 (10,079) ^c	0	0	100
Saskatchewan Environment	58 (10,585)	58 (10,585) ^c	0	0	100
TOTALS	471 (139,499)	186 (24,950)	283 (114,033)	2 (516)	
Manitoba					
Ducks Unlimited Canada	56 (11,000)	2 (179)	54 (10,821)	0	88
Nature Conservancy of Canada	20 (3,760)	2 (160)	18 (3,600)	0	95 ^d
Manitoba Habitat Heritage Corporation	339 (55,290)	22 (2,290)	317 (53,000)	0	100
TOTALS	415 (70,050)	26 (2,629)	389 (67,421)	0	
Ontario					
Ducks Unlimited Canada	5 (940)	1 (64)	4 ^e (876)	0	33
Nature Conservancy of Canada	27 (2,534)	25 (2,443)	2 (91)	0	18.5
Ontario Farmland Trust	3 (350)*	3 (350)	0	0	100
Thames Talbot Land Trust	2 (110)	2 (110)	0	0	100
Oak Ridges Moraine Land Trust ^g	18 (2,723)	18 (2,723)	0	0	unknown
TOTALS	55 (6,657)	49 (5,690)	6 (967)	0	
Quebec					
Nature Conservancy of Canada	12 (1,853)	7 (1,574)	5 (279)	0	58
TOTALS	12 (1,853)	7 (1,574)	5 (279)	0	
Nova Scotia					
Nature Conservancy of Canada	7 (3,202)	7 (3,202)	0	0	0
Nova Scotia Nature Trust	7 (1,174)	7 (1,174)	0	0	0
Ecology Action Centre - HelioTrust	2 (300)	0	2 (300)	0	100
TOTALS	16 (4,676)	14 (4,376)	2 (300)	0	
New Brunswick					
Nature Conservancy of Canada	2 (312)	2 (312)	0	0	0
TOTALS	2 (312)	2 (312)	0	0	
NATIONAL TOTALS	1,359 (318,807)	608 (99,415)	740 (204,249)	11 (15,143)	

^a indicates % of conservation easements that allow agricultural activities **not** % of acres on which agricultural activities are allowed

^b three conservation easements (13,500 acres) in partnership between NCC and DU therefore total split receipt acres and total acres are not an exact sum of the columns

^c includes easements being placed on land by agency prior to sale

^d almost all properties have some ag use but CE may only be on the portion of the property that does not include the agriculturally productive part of the property

^e one of these CE's was "sold" in exchange for habitat enhancement work rather than a cash payment

^f three organizations identified but did not participate were Newfoundland and Labrador Legacy Nature Trust, Island Nature Trust in PEI and Tula Farmland Trust in New Brunswick

^g Oak Ridges Moraine Land Trust was not contacted these acres were taken from their website <http://www.oakridgesmoraine.org> August 8, 2007

* these easement are to be completed soon but captured because specific to agriculture

a) Conservation Easements Registered Since Enactment of Legislation

The trend in use of CEs since the enactment of provincial legislation is of interest since it may reflect increases in the efficiency with which delivery agencies have used this tool, and the degree to which landowners are willing to participate in CEs as they become better known.

Each organization surveyed was asked for the number of CEs registered each year since their program began. The data was not tracked in this format by all organizations surveyed; available information is presented in Table 5. In general, those agencies that tracked the number of CEs registered per year reported an increased rate of uptake over time. Reasons for this trend may include the introduction of new legislation or legislation amendments, increased delivery efficiency by agencies, increased use of CE payments by some delivery agencies, increased uptake by landowners and/or increased familiarity/comfort with CEs as a conservation tool

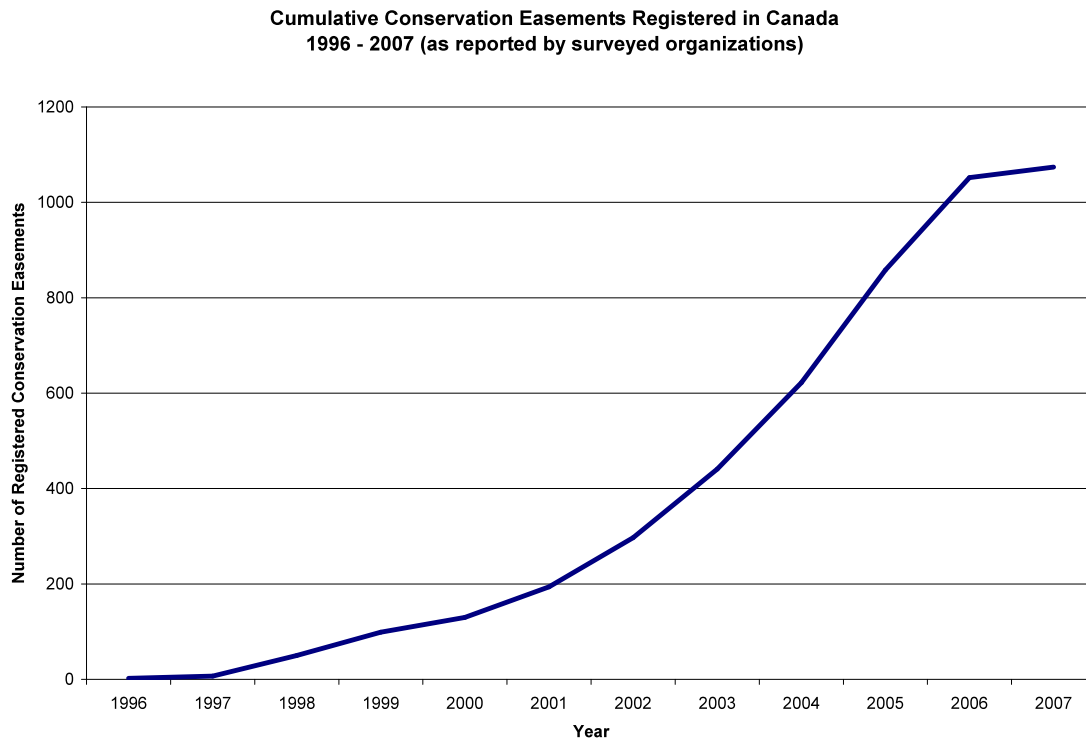
Table 5: Number of conservation easements completed annually by organization

Agencies	96	97	98	99	00	01	02	03	04	05	06	07
BC												
Ducks Unlimited Canada						1				1	1	
The Land Conservancy		1	28	6	7	8	28	24	21	55	3	40*
AB												
Ducks Unlimited Canada					10				24	10	1	9
SK												
Ducks Unlimited Canada				5					19	59	49	60**
Nature Conservancy of Canada		1	2	1	1	1	10	25	20	20	28	3**
Saskatchewan Agriculture and Food		2	2	9	3	5	6	11	7	21	42	
Saskatchewan Environment			8	9	9	10	10	10	10	1	1	
MB												
Ducks Unlimited Canada					2	2	3	5	18	8	5	13
Manitoba Habitat Heritage Corporation				18		30	41	60	60	60	60	10**
ON												
Nature Conservancy of Canada	2	1	3	5	6	3	2	4	1	0	0	
PQ												
Nature Conservancy of Canada								2	1	2	3	4*

* projected for 2007

** to date (April 30, 2007)

Figure 1: Cumulative Conservation Easements Registered in Canada



Notable in Table 5 and Graph 1 is the steady increase in the use of CEs since legislation was enacted. The increase of easements in 1998 represents Manitoba enacting its legislation. The more rapid increase after 2001/02 is in part a result of The Land Conservancy in BC and the Manitoba Habitat and Heritage Corporation programs. Both programs have more demand than capacity. The Land Conservancy credits increased awareness to the expansion in their program while the Manitoba Habitat Heritage Corporation attributes increased awareness and the inclusion of paid CEs. Saskatchewan also contributed significantly to the increase in the early 2000s due to the Nature Conservancy of Canada initiating paid CEs and to the government applying CEs on public land that was sold (Section III, 8, d below).

2) Main Purposes of Conservation Easements by Organization Surveyed

Each province describes different purposes for their CE legislation, as indicated in Table 1. In practice the purpose of CEs in Canada are strongly influenced by the goals of the recipient agencies that register them. The goals of primary CE delivery agencies surveyed are summarized in Table 6.

The survey results showed that the three main agency objectives for registering CE's can be classified as:

1. Biodiversity protection
 - Twelve organizations (50% of respondents) named biodiversity protection as a primary purpose for their CEs. This represents more than half the acres captured in this survey under CEs.
 - Six organizations (25% of respondents) named a primary or secondary purpose related to biodiversity conservation (e.g. native grasslands, a conservation target, the natural features of a landscape, remnant habitat). Slightly less than a quarter of the acres captured in this survey under CEs are protected as least in part for biodiversity related purposes.
2. Wetland, water source and riparian protection
 - Nine organizations (38% of respondents) listed wetlands, riparian, watershed and/or source water protection as the primary or secondary purpose of their easements. Nearly half of the acres under CEs captured by this survey are represented by these organizations.
3. Protection of working agricultural landscapes
 - Four organizations (<2% of respondents) state the protection of working agricultural landscapes as their purpose. Three percent of all the acres under CEs captured in this survey were registered for this purpose. Many of the other organizations surveyed place CEs on agricultural land when the current land use is compatible with their main conservation goals (e.g. biodiversity or wetland conservation).
 - Two agencies listed the protection of agricultural land from urban and industrial development and associated fragmentation, as being their primary motivation for establishing easements.
 - One agency working to protect ranchlands stated that well managed grassland provides protection to biodiversity, the watershed and agricultural uses, indicating that these factors are not mutually exclusive.
 - One organization registers CEs on traditional soil based farming (e.g. forages, potatoes, and corn with cover crops) to provide winter forage for waterfowl.

Please note that the percentages above do not add to 100 as some organizations provided more than one stated purpose as indicated in Table 6.

Table 6: Purpose for conservation easements by organization

Conservation Agency	Stated Purpose
BC	
Ducks Unlimited Canada	Protection of wetlands and traditional soil based farmland
Nature Conservancy of Canada	Protection of biodiversity
The Nature Trust	Protection of biodiversity
The Land Conservancy	Protection of biodiversity and watersheds
AB	
Ducks Unlimited Canada	Protection of wetlands
Nature Conservancy of Canada	Protection of biodiversity
Alberta Conservation	Protection of biodiversity

Association	
Southern Alberta Land Trust Society	Protection of ranching landscapes and therefore watersheds and biodiversity
SK	
Ducks Unlimited Canada	Protection of wetlands
Nature Conservancy of Canada	Protection of biodiversity
Saskatchewan Agriculture and Food	Protection of wetlands and native grasslands
Saskatchewan Environment	Protection of biodiversity
MB	
Ducks Unlimited Canada	Protection of wetlands
Nature Conservancy of Canada	Maintenance of natural qualities of landscape
Manitoba Habitat Heritage Corporation	1. Protection of high quality wetlands 2. Protection of native grasslands 3. Protection of riparian areas 4. Protection of watershed
ON	
Ducks Unlimited Canada	Retain existing habitat condition
Nature Conservancy of Canada	Protection of a conservation target – a species or a system.
Ontario Farmland Trust	Prevention of urban/industrial development on farmland
Thames Talbot Land Trust	Protection of the headwaters and riparian areas of the Thames River and Carolinian Forest remnants
PQ	
Nature Conservancy of Canada	Protection of biodiversity; halt land use conversion and protect species at risk habitats
Atlantic Canada	
Nature Conservancy of Canada (Nova Scotia and New Brunswick)	Protection of biodiversity
Nova Scotia Nature Trust	Protection of biodiversity on lands of ecological significance
Ecology Action Centre - Heliotrust	Conservation of working farms from fragmentation and speculative real estate pricing

3) Common Land Use Restrictions

CEs are relatively flexible tools in which land use restrictions are negotiated on an individual basis. In order to achieve the purposes outlined in provincial legislation (Table 1) and to meet each conservation organization's objectives (Table 6) the framework of all CEs is fairly consistent. Each organization surveyed said that specific land use restrictions in each easement are negotiated to protect the environmental feature(s) of interest (e.g. burrowing owl habitat) and to be compatible with a landowner's needs and wants (e.g. livestock grazing).

Land use restrictions fit on a scale of very restrictive to less restrictive and can be classified into four broad categories:

1. No use or set aside – These restrictions are generally established to protect an environmental feature that is particularly sensitive to human activity (e.g. sand dunes, piping plover nesting habitat) and are therefore the most restrictive. Such an easement would not allow any new land use activity including but not limited

to vegetation removal, breaking of soil, construction of buildings, roads or trails, use of off highway vehicles, or subdivision. It may or may not allow a limited low impact recreational use such as hiking. “No use” easements would likely allow current uses, like a seasonal cottage, to continue.

2. No clear, no break, no drain – These restrictions are somewhat less limiting than “no use” restrictions and are generally used when the environmental feature to be protected is sensitive to some activities but less sensitive to others (e.g. cultivating native grasslands vs. grazing native grasslands). Such an easement would not allow any clearing of trees, tillage of soil or draining of wetlands. The landowner may retain the right to harvest hay, graze permanent cover forages, travel on current roads and trails, and / or live on the property.
3. Restricted agricultural / forestry use – These restrictions allow use of the land consistent with specific standards of practice considered beneficial to the environmental state of the property, and limit activities thought to reduce desired environmental benefits or ecological functions. Such an easement may allow specific crops to be farmed that provide winter waterfowl forage (e.g. corn stubble with a cover crop) but not allow a large scale greenhouse. Or a landowner may retain the right to harvest trees as per a conservation focused forest management plan prepared by a Registered Forest Practitioner but not be allowed to cut trees in a sensitive riparian area.
4. Restricted development – These types of restrictions are the most flexible and are essentially designed to allow most forms of agricultural or renewable resource use. They may require title binders to maintain large tracts of land and would not allow any subdivision. Replacement buildings may be allowed if they compliment the original purpose of the CE. Sometimes these are called “open space” easements.

While there are certainly land use restrictions that fall into the “No Use” and “Restricted Development” categories most of the land use restrictions negotiated in CEs by the agencies surveyed would be classified as “No clear, no break, no drain” and “Restricted Agricultural / Forestry Use”.

Specific to agricultural uses, 20 of the 24 land trusts interviewed continue to allow some form of agriculture on at least some of their CE land (Table 4); while only four organizations allowed no agricultural use at all. The most common forms of agriculture allowed are grazing and haying. The timing and methods of grazing and haying may be described in the CE or in a separate management agreement. Three land trusts allow or would allow crop production as well.

As discussed in Appendix A, the degree of land use restriction affects the appraised value of the CE. In general the more restrictive the CE and the more rights the landowner gives up, the less flexible the land use, and therefore the higher the value of the CE. Conversely, less restrictive easements impose fewer limits on the use of the property and tend to have a lower value. Thus, all other things being equal, a “restricted development” CE would have a lower value than a “no use” easement.

4) Factors Limiting Conservation Easement Delivery

Respondents were asked whether they would register more CEs than they currently hold and if so, what factors may limit their capacity to do so.

While most agencies surveyed reported a desire to increase the number of CEs they deliver, two agencies did not. Concern was expressed regarding perceived legal uncertainty of CEs (e.g. if an easement were challenged would it stand up in court), and the potentially large financial and human resource requirements for monitoring and long term stewardship of CE properties relative to the benefits of CEs. A third organization suggested that CEs may not be the best tool for their organization and that they may not be seeking more.

For those organizations that want to increase the number of CEs they hold, many view them as another tool with which to meet their conservation objectives. Instead of owning a property outright and having the responsibilities of ownership, the conservation organization essentially becomes a partner in the protection or management of important landscape features with the landowner. While some organizations (~1%) on some projects view CEs as an interim arrangement where a landowner will eventually gift the property outright or sell it to the organization, most prefer that the land remain under a CE and a network of conservation minded landowners across the countryside is created.

Overwhelmingly the primary factor limiting the securement of additional CEs was funding. Seventy-nine percent of those surveyed said that they either lacked money or staff to deliver the program or to carry out the long-term stewardship requirements (e.g. annual monitoring of restrictions).

Sixteen percent of the organizations surveyed also said that landowners still have some misinformation about CEs or they are concerned with the perpetual nature of easements and that negatively affects the organizations' ability to register more CEs.

In British Columbia the Agricultural Land Reserve (ALR) is seen as a limitation to the uptake of CEs. This is a zone designated for agricultural use throughout the province. Section 22(2) of the province's Agricultural Land Commission Act says that a conservation covenant that prohibits agriculture on land in the Agricultural Land Reserve is not effective until approved by the Agricultural Land Commission. Theoretically British Columbia's CE legislation and the ALR Act are not necessarily in contradiction and in many cases may complement one another. For example the ALR Act should not impede conservation covenants on ranchland that encourage grazing. However in practice the ALR commission has not generally allowed such covenants on the grounds that they do not allow cultivation or other forms of agriculture. In contrast, 70.5% of the applications to remove land from the ALR for development purposes were approved (Green, 2006).

In 2005 Ontario's Conservation Lands Act was amended. Although it is thought that the changes were necessary and positive, the regulations have not yet been written to support the Act. For this reason there are some unknown factors and consequently one organization has ceased to sign any more CEs until the regulations have been written.

5) Factors Limiting Uptake of Conservation Easements by Landowners

Three key limitations to the uptake of CEs by landowners have been identified by conservation agencies.

1. Economic situation of the possible donor
2. Lack of awareness or misinformation
3. Issues surrounding the structure of the easements (the perpetual nature, the restrictions involved, difficulties with legalese etc.)

Five organizations suggested that the tax benefits of donating CEs are not adequate incentives for landowners, especially for agricultural producers. One organization indicated that if more CEs were purchased, uptake would be greater. Having noted the above, a number of donors (predominantly in British Columbia) have not accepted tax receipts and simply donate CEs – for the most part these are on recreational properties, rather than land that is used to derive income.

Lack of awareness and misinformation on the part of landowners was identified by seven organizations as a limitation to CE uptake. Six organizations identified the structure of CEs as a limitation to uptake by landowners – in particular the perpetual nature.

The findings of this survey are supported by Kabii and Horwitz (2006) who described four concepts that influence landowners' participation in CE programs including financial circumstances, landowner demographics, knowledge of programs, and perceptions of risks and benefits (financial or other) of the program itself. Underpinning these four points are landowners' philosophies and values with respect their conservation ethic and how they see their personal role in a healthy environment for society.

6) Influence of Education / Communications on Conservation Easement Uptake

Seventeen organizations (71% of respondents) do work to educate landowners about CEs. The methods used included issuing press releases upon completion of new easements, writing articles in magazines, newsletters, or newspapers (example in Appendix D), providing information about CEs on websites, brochures and fact sheets, workshops, attending and / or speaking at landowner focused events and setting up booths at tradeshow.

Two of the seven organizations that replied they do not actively promote their CE programs have very targeted geographies and only approach the landowners of the properties on which they want to register CEs. The remaining five land trusts do not actively promote CEs because they do not want to expand their current use of them.

All organizations that do some level of education feel there is at least some benefit and most felt there is significant benefit.

Most organizations that have registered a significant number of CEs in a specific area believe there is a threshold after which most landowners are aware of and understand the concept of CEs. Educational programming is a high priority up to this point. Early adopters enter into CE agreements and are thought to then educate their family and

neighbours. Respondents indicated that this results in a cluster of CEs on the landscape as landowners become more familiar, and therefore more willing to accept CEs in a local area.

Four organizations (16% of respondents) indicated that since an awareness threshold has been reached, their CE programs are oversubscribed and demand exceeds the ability of the organization to deliver new CEs in a timely manner. However, as Kabii and Horwitz (2006) assert, some landowners may still not be willing to participate in a CE even when awareness and understanding is high – the acceptability of a CE to an individual landowner is also dependent on his or her needs, goals, socioeconomic status and attitudes to conservation and the environment.

Some organizations have begun directing communications efforts to lawyers, accountants, mortgage specialists, real estate agents, financial planners, and municipal governments. These service providers have been targeted because they are generally consulted in the registration of CEs and increased awareness simplifies the registration process and reduces costs; they can also help promote CE's in the course of providing financial, estate or municipal planning services to landowners.

7) Administrative Costs of Conservation Easement Registration

The only difference in cost to a conservation organization between donated, paid and split receipt CEs is the monetary consideration paid to the landowner in a paid CE or split receipt donation. A couple of organizations also noted a donated CE may take a little extra time if going through the Ecogift Program but otherwise the administrative costs are very similar.

There are three administrative components to holding CEs:

1. Securement
2. Stewardship
3. Possible Defense

Securement is the acquisition of a CE, beginning with the initial negotiations to the registration of the CE. Related costs usually include staff time and overhead, legal fees, appraisal fees, a baseline inventory required for future monitoring and a survey and / or an environmental audit if necessary.

Stewardship of a CE normally involves regular communication with landowners as well as regular monitoring of the site to ensure the restrictions and management requirements stipulated in the agreement are being followed. Related costs usually include staff time and overhead, travel costs, field equipment (e.g. GPS unit, camera, etc.) and report preparation.

Possible defense refers to the potential requirement of having to legally defend a CE. Many CEs will never have any infringements on the restrictions however a 1999 Land Trust Alliance survey found at least 7% of CEs had some level of violation (Brewer, 2003). This survey also found that infringements are not generally committed by the original landowners. If and when infringement occurs, the conservation organization needs to decide if and how they will take legal action; potential costs may include staff time and overhead and legal fees.

Surveyed organizations define and track administrative costs quite differently and the range of average administrative costs per project varied from \$2,000 – \$120,000. The variance is large because of differences in what organizations classify as administrative expenses and the prices of some services in different regions. For example appraisals in Ontario or Alberta tend to be more expensive than in Saskatchewan.

Table 7: Average administrative costs and descriptions by province

Province	Number agencies reporting	Average admin cost per project	Comments
BC	4	\$8,917	Two agencies tracked staff time and overhead, environmental audit, appraisal, and baseline inventory costs; one agency tracked baseline and legal expenses only; one agency tracked staff time costs only.
AB	3	\$27,000	One agency reported "variable" costs; two agencies tracked overhead, staff time, admin support, legal, appraisals, staff travel, and baseline costs. Appraisal costs reported to be high in Alberta due to high demand for professional services in this province.
SK	4	\$7,000	One agency reported "variable" costs; two agencies do not track admin costs; one agency reported estimated costs for staff time, overhead, legal, and appraisal services.
MB	3	\$2,000	One agency reported "variable" costs; one agency reported average admin costs of \$150/ac; one agency reported costs but did not include legal fees.
ON	4	\$57,500	Three agencies reported average admin costs between \$15,000 - \$25,000 per project; one agency reported large average admin cost to date skewed by one large project that required expensive land survey, negotiation and appraisal. Typical costs (all ON agencies) were overhead, legal, survey, appraisal, staff time for inventory, negotiation and monitoring.
PQ	1	\$15,000	Overhead, staff/consultant time, appraiser fees, legal (does not include surveying which can be substantial depending on the situation)
Atlantic Canada	3	\$13,000	One agency reported staff, overhead, legal and appraisal costs; one agency reported costs for landowner meetings, site assessments, internal approvals, baseline inventory, legal and appraisal fees and site dedication costs; one agency reported only staff time and legal costs
Total	22	\$19,236	Unweighted average across all provinces

While there are legal requirements for conservation organizations to show due diligence in ensuring that the conditions of the CE are being met, provincial legislation does not identify specific requirements and different agencies have different standards. The level of detail and information each organization requires for its baselines and stewardship programs can vary (National Ecogift Monitoring Survey, 2004). Most organizations consider compliance with the restrictions and the ecological health of a property when they document (i.e. baseline) and track (i.e. monitor) the state of the property. Some organizations do full biophysical inventories as baselines while others complete a basic photo journal with GPS maps to document the current state of the property. Most organizations carry out biannual or annual monitoring visits while some monitor less often. Some organizations hire third party consultants to do this work which can add to the administrative cost. Table 7 illustrates the variance in average reported administration costs per project across different Canadian provinces and regions.

8) Lessons Learned by Conservation Easement Delivery Agencies

CE legislation has been in place for between four and twelve years across Canada. Over this period delivery agencies have refined their methods to more efficiently utilize this tool. The survey polled CE recipient organizations in some key areas, discussed below.

a) Improvements to conservation easement agreements and stewardship protocols

Ten of the agencies (42% of respondents) interviewed said they have re-written parts of their CE document with a specific focus on the restrictions to make easements easier for landowners to understand; simpler to monitor and enforce; and more defensible if challenged. One organization has also adapted their restrictions to reflect changing landscape conditions such as the rapid introduction of windmills in southern Alberta.

There is a trend toward very simple and straightforward restrictions that are easy to monitor. Some agencies are using or plan to use only “land use” restrictions (e.g. no cultivation, no herbicide or fertilizer use, no new buildings, no road development) that are straightforward to monitor and strive to work with landowners on voluntary management plans or agreements that benefit the landowner and the natural feature the easement is protecting (e.g. grazing stocking rates and field rotations; pesticide management plans; recreational carrying capacity; selective logging plans). Alternatively, other tools are used as incentives to influence management actions (e.g. cost sharing programs for off site watering systems).

Many organizations are also updating baseline report templates² and monitoring protocols to better address each of the restrictions in the CE. For example, if the easement prohibited the widening of any trails, the baseline would have to clearly and thoroughly document the current trails and each monitoring visit would have to document trail size.

b) Introduction of Paid Conservation Easements

² The format of the report used to document the current state of the property when the conservation easement is registered.

Six agencies (25% of respondents), all prairie-based, have added a significant paid CE component to their programs in order to increase participation. CEs have also been purchased in British Columbia and Ontario by two organizations; one of these agencies, in both regions, plans to continue purchasing easements, specifically on agricultural land, while the other has no particular plans to continue paying for CEs. One organization has purchased a small number of CEs in Quebec, but does not expect to expand this program significantly. The three organizations in British Columbia, Ontario and Quebec that do not plan to continue paying for CEs expect to invest their resources in land purchases instead.

Two other organizations have offered paid CEs since the beginning of their easement programs - one on the prairies and one in Atlantic Canada. Two other organizations (one in Ontario and the other in Alberta) who work predominantly with agricultural producers would pay for CEs if funding were not a limiting factor.

Each of the organizations that are paying for CEs (or would like to) work predominantly on agricultural land where landowners:

- 1) Are typically dependent on their land for their livelihood, and/or
- 2) Do not perceive significant benefits from a charitable donation receipt,

The data and anecdotal evidence collected shows there are a number (77%) of CEs registered on land that is at least partially used for agricultural purposes however it is unlikely that landowners who make their primary income from farming or ranching (specifically large mixed farms, ranches, dairy, annual crop or specialty crop farms) would register a CE on a large proportion of their operation unless the easement arrangement was compatible with their business objectives. In a survey completed by Brown and Trout (2003), a large portion of the landowners willing to consider CEs derived a significant portion of their income from off farm sources, while those who derived their principal income from farming were less likely to enter into a CE. The land in these operations, while playing a significant and important environmental role is also a valuable business asset - in registering a CE landowners may forego some business options. This hypothesis is supported by a Saskatchewan Wetland Conservation Corporation (Metz, 1999) phone survey of 297 land owners that found 70% were concerned that entering into a CE would negatively affect their long term land management options and would reduce their property values.

c) Recognition of Long-term Monitoring Requirements and Costs

CEs need to be monitored to ensure that the conservation values are being upheld. When CEs were first being used many groups did not consider the long term financial implications of stewardship. Some organizations have since created a dedicated endowment fund for monitoring and possible defense of CEs that they contribute to with each new easement.

d) Conservation Easement Use by a Provincial Government

The Saskatchewan government, through Saskatchewan Agriculture and Food, enters into CEs to protect natural features (e.g. native and naturalized grasslands and wetlands) on provincial crown land *prior* to its sale. Originally the easement agreements

allowed existing agricultural uses such as grazing, but now may allow some restricted development as long as the development covers less than 10% of the total CE area.

9) Future Possibilities – Adaptations of Conservation Easements

Many organizations surveyed informally offered suggestions about how CEs could be adapted or applied to protect important agricultural and natural capital. Many recognized that for conservation (or agricultural) easements to be of greater interest to farmers and ranchers there needs to be a solid business case for them to encumber their land title and affect their long term management options. Expanded CE programming might include:

- Adapting current CE legislation to include easements that are specifically targeted at protecting high capability agricultural land (e.g. the Ontario Agricultural Institute Act and the 2005 amendments to the Conservation Lands Act). This effort could be complemented by expanded paid CE programming and the development of an “Agricultural Gifts Program” (see Appendix E). Some agricultural land that offers EG&S benefits may not be eligible for the attractive tax benefits of the Ecogift Program (Section I, B, 1). A similar program for agricultural land, with an emphasis on split receipting, could be instrumental in increasing the uptake of CEs by agricultural producers.
- “Transferable Development Credit” (TDC) programs where private industry “pays for conservation”. Developers can buy credits from landowners of agriculturally productive and/or environmentally sensitive lands and then apply the credits to increase building densities on land that is more appropriate for development. A CE is registered on the agriculturally or environmentally important land to identify that the development rights were removed as TDCs. Often seen as a win-win solution; conservation and development needs can be met with a well designed TDC program (Beale and Faye, 2006).
- “Purchase of Development Credit” programs where development credits are either extinguished upon purchase or are banked to help initiate a transferable development credit program in the future. Governments, in partnership with NGOs, have funded this type of program in the United States (Greenaway, 2003). As with TDCs a CE is registered when the development credits are removed.
- “Transferable Tax Credit” programs where a landowner who would receive more value from cash than a tax credit could “sell” or “transfer” his or her tax receipt received from a CE donation to another person who it could use the tax credit when filing their annual income tax return (Colorado Department of Revenue, Taxpayer Service Division, 2007). After implementing transferable tax credit programs, CE programs Colorado and Virginia have had increased uptake.

III. Conservation Easements – A Tool to Conserve Natural Capital and Sustain Ecological Goods and Services from Agricultural Landscapes?

A. Apparent Strengths and Limitations of Conservation Easements as an Agri-Environmental Conservation Tool

Expanding or adapting the use of CEs for sustaining natural capital and associated EG&S in agricultural landscapes could further progress toward agri-environmental objectives. In the 12 years since CEs were first introduced in Canada agencies have gained substantial experience in the delivery and valuation of CEs. This experience has demonstrated that:

1. Functional legislation exists in all provinces including those that contain the majority of Canada's agricultural land.
2. Easements can successfully conserve natural features such as wetlands, woodlands, and grasslands on working agricultural land and can be used to encourage long-term sustainable use on fragile or marginal agricultural lands.
3. Easements have good potential to restrict uses that may diminish the capacity of agricultural lands to provide targeted EG&S, including development of high capability agricultural lands.
4. Easements can and have been used to target specific landscape features for purposes such as source water protection and species at risk habitat, or conservation of high capability agricultural lands that are at risk of development.

CEs have many features that are appealing to landowners, non-governmental organizations, government agencies and policy makers. They provide:

1. The ability to recognize and reward landowners for management that limits various past or potential future land uses. This may be more palatable than regulatory measures that restrict use without compensation, and could be well suited to situations where limitation of certain agricultural or other developmental uses of fragile or sensitive land is desirable (e.g. riparian areas, wetlands, lands that are marginal for annual crop production or productive agricultural land on an urban fringe).
2. A valuation method that is context specific and based on land use rights foregone which has evolved in the marketplace and is generally linked to land value.
3. An instrument that formally links land managers and conservation organizations with common stewardship interests – possibly contributing to a stronger stewardship ethic among landowners and providing opportunities for broader land management partnerships through other complementary soil, water and habitat conservation programs.
4. A tangible contract with clear terms and conditions and legal recourse for non-compliance that is supported by legislation.
5. A potentially proactive measure to prevent conversion of natural landscapes to non-sustainable uses with a commensurate reward for “good actors” who have maintained their natural capital. As such, CEs may be a natural complement to programs such as Greencover Canada or the National Farm Stewardship Program and could be used to encourage and reward long term stewardship of riparian areas, wetlands or fragile native rangelands.
6. A ready-made conservation instrument that can be utilized on broader scales by governments and NGO's alike. Some provincial government agencies, including Saskatchewan Agriculture and Food have already made innovative use of existing CE legislation for agri-environmental conservation purposes.

As this paper has identified, there are some potential challenges to using current CE legislation for agri-environmental program purposes:

1. Negotiation, administration and registration of CE's may be time consuming and costly.
 - *However when compared to other alternatives (e.g. government or conservation agency landownership, regulatory changes, or voluntary stewardship programs) the costs and benefits may be comparable. More analysis is needed to evaluate CE's against other options.*
2. Current valuation methods are based on the market value of land which, in the case of agricultural land where development potential is low, is determined by production capability. Although based on sound, contemporary land appraisal methods, current systems of valuation may not fully recognize the non-market EG&S benefits provided. The result is the estimated market value of a CE that produces significant EG&S (e.g. marginal rangeland that provides critical habitat for species at risk) may be low, while natural capital value may be relatively high. Thus CE values may not be fully commensurate with the level or significance of EG&S provided.
 - *New methods to value easements on important natural capital features may be required. Alternatively a "bonusing" system to recognize the value of specific features that are of particular interest for conservation could be established (e.g. class 1 agricultural lands).*
3. Long term funding requirements for monitoring and the risk of having to legally defend an easement.
 - *Long term funding requirements could be managed through the establishment of endowment funds at the outset of CE projects. The risk of legal defense may be mitigated by establishing minimum standards for CE holders regarding their ability and process to monitor, enforce, and defend CEs (Pidot, 2005; Barstead, 2004).*
4. Funding for paid CEs may be limited.
 - *There are some very creative examples of ways to fund programs that encourage the provision of EG&S from agricultural lands. The following show unprecedented examples that link consumer willingness to pay for natural capital and EG&S with producer's willingness to supply/accept compensation for long term stewardship of natural capital*
 - i. *New York City invested \$1.8 billion to purchase land and CEs on 80,000 acres of key stream, wetland and floodplain lands to protect source water in its surrounding watersheds. These purchases saved the city approximately \$6.2 billion on water treatment costs. New York City also continues to invest annually in stewardship programs.*
 - ii. *Similarly, to fund conservation and open space programs in Colorado voters passed a ballot measure in favour of open spaces dedicated ¼% sales tax levy.*
5. Current legislation may not provide for conservation of a full range of natural capital features (e.g. registration of CEs to conserve high capability agricultural lands) in all provinces and may not allow the federal government to directly hold CEs in all jurisdictions. For example, the federal government is not named to hold CEs in Alberta or Quebec.

- *A more detailed legal review is required to determine the limitations of existing legislation in this area, and recommend areas for review and potential amendment. Precedent exists where CE legislation and / or regulations have been amended. For example in 2005 Ontario amended their CE legislation to include agricultural lands.*
6. Some landowners may be apprehensive about long term restrictions on their land.
 - *In practice CEs are generally perpetual agreements however most provincial legislation provides for shorter term arrangements as mutually agreeable to the landowner and recipient agency. Quebec's legislation stipulates a minimum term of 25 years. Legislation in each province provides for termination or amendment of agreements.*
 7. Alternatively other landowners may be concerned that CE restrictions are not sufficiently binding upon their successors. The flexibility provided by termination and amendment provisions can cause some landowners to feel CEs are "not permanent enough" (Kabii and Horwitz 2006).
 - *If a property is certified as an Ecogift any changes to the CE must be approved by the Minister of the Environment which should add some insurance for a landowner concerned about this. Also in such cases a landowner may wish to "layer" conservation options by entering into a CE with one organization and arrange to bequeath title to their land to another suitable agency. Thereby ensuring a higher level of security for the features they want protected when their tenure ends.*
 8. The number, capacity and focus of existing land trusts may not be suitable to achieve desired agri-environmental goals.
 - *Currently there are only two land trusts in Canada dedicated to farmland protection, one dedicated to ranchland protection and two others that responded in the survey that they would specifically register agricultural easements with the purpose to protect farmland if there was provision in their provincial legislation. In order for CEs to have a significant influence on the stewardship of natural capital on agricultural land, investment in partnerships to deliver them at broader scales would likely need to be made, including arrangements to link consumer willingness to pay for CEs on natural capital as discussed in paragraph 4 above.*

B. Conclusion

The results of this analysis show that conservation organizations are actively and successfully using CEs as a tool to work with private landowners to achieve land conservation objectives. Currently CEs are used to primarily to protect biodiversity; however there appears to be good potential to expand the scope and use of CEs to achieve broader objectives. Current CE legislation and programs contribute to the promotion of some agri-environmental objectives, in particular the conservation of rangelands and pasture where biodiversity conservation objectives are complimentary. There is a high degree of compatibility between biodiversity conservation and provision of other EG&S such as clean air and water, soil conservation and provision of open space, wildlife habitat and sustained production of forage and livestock; therefore it is

likely that existing CEs encourage provision of a wide range of EG&S beyond biodiversity benefits.

As indicated by the review of provincial legislation and the survey of conservation organizations, the results of this review strongly indicate that CEs can be applied to focus on other specific EG&S that are in keeping with societal priorities related to climate change, protection of air and water quality and conservation of biodiversity.

IV. References

- Atkins, J., A. Hillyer and A. Kwasniak. 2004. Conservation easements, covenants and servitudes in Canada: A legal review. Report No. 04-01. North American Wetlands Conservation Council (Canada), Ottawa. 137 p.
- Barstead, D. 2004. Summary from the Final Report. National Ecogift Monitoring Survey.
- Beale, B and C. Faye. 2006. Open Spaces and People Places: Transferable Development Credits. Land Stewardship Initiative. Canada West Foundation. Online material: www.cwf.ca.
- Brewer, R. 2003. Conservancy The Land Trust Movement in America. University Press of New England. Lebanon, NH. 348 p.
- Brown, L and E. Trout. 2003. Results from the Conservation Easement/Agreements Survey. Department of Economics, University of Manitoba, Winnipeg, MB. 74 p.
- Colorado Department of Revenue, 2007. Taxpayer Service Division. FYI income 39. Gross Conservation Easement Credit Revised 04/07. Online material: www.revenue.state.co.us/main/home.asp
- Denhez, M. 2003. Giving Nature its Due Tax Treatment of Environmental Philanthropy: Recent Improvements, Remaining Barriers, and Current Opportunities. Issues Paper, No. 2003-1. North American Wetlands Conservation Council (Canada), Ottawa. 54 p.
- Environment Canada. 2003. The Canadian Ecological Gifts Program Handbook 2003. Gatineau, PQ. 28 p.
- Green, R. 2006. Case Studies of Agricultural Land Commission Decisions: The Need for Inquiry and Reform. Environmental Law Clinic, University of Victoria, Victoria, BC. 41 p.
- Greenaway, G. 2003. Conservation easements in Alberta: programs and possibilities. Corvus Conservation, Calgary, AB. 29 p.
- Kabii, T and P. Horwitz. 2006. A review of landholder motivations and determinants for participation in conservation covenanting programmes. Environmental Conservation 33 (1): 11-20.
- Metz, S. 1999. Landowners' Attitudes Toward the use of Conservation Easements in Saskatchewan. Saskatchewan Wetland Conservation Corporation. 16 p.
- Pidot, J. 2005. Reinventing Conservation Easements. Lincoln Institute of Land Policy, Cambridge, MA. 40 p.

APPENDIX A: Valuation of Conservation Easements

Regardless of whether a conservation easement (CE) is being donated as an ecological gift or not, if a tax receipt is to be issued then a valuation for charitable purposes requires an appraisal to be completed by a certified appraiser (i.e. a member of a recognized, professional association of appraisers). Appraisals are also useful to both a conservation organization and a landowner in negotiating a purchase price. Appraisals are estimates of value. As a result, appraised values will vary somewhat depending on the appraiser and the method of valuation used.

Valuation Methodology

Traditionally, land or real estate values are determined using a “**comparable sales**” methodology. This method of valuation uses actual sales of similar land to compare to the land being valued. For example, in an area where recreational or urban development potential is high, appraisers would look at adjacent sales of land with similar characteristics to the land being appraised to estimate its fair market value. This method is the preferred one. However, a number of issues exist with this method of valuation for CEs in Canada, which preclude its use as a common method. Issues include:

- Not enough parcels of land subject to CEs have sold in Canada to use the comparable sales method. Even in the US, where CEs have been in place in some jurisdictions for several decades, the numbers of sales of CEs are often insufficient to use the comparable sales method of valuation,
- Sales of land subject to CEs must be “arm’s length” deals made on the open market to be used as comparable sales. The few sales of lands subject to CEs in Canada are primarily sold privately (i.e. not listed on the open market and subject to competitive offers), therefore it is difficult to determine whether the sale price is a true reflection of the value of the CE,
- Even in the few situations where CE lands have sold on the open market, the precise nature of easements (i.e. the restrictions, owner’s reserved rights, etc) differ from property to property, thereby making direct comparisons difficult. There may also be some difficulties determining the actual value of the CE since often the CE is only on a portion of the property and the sales information does not separate the value of the land subject to the CE from the land not encumbered by a CE. In other situations, the loss of land value associated with the CE may be spread across the entire acreage, masking the value of the CE. Or, the CE may enhance the value of the unencumbered portion of the land offsetting the loss of value on the land encumbered,
- Purchased CEs (i.e. CEs purchased from a landowner by a qualified organization or a holder) cannot likely be used as comparable sales because they are sometimes acquired as bargain sales (especially on high valued land) masking the true value of the CE, or they include incentives (e.g. cost sharing on conservation projects) over and above the value of the CE, especially on low valued land.

Because of the inherent and long term problems associated with the comparable sales method, CE gifts are most often valued using a “**before and after**” valuation method as is explicitly recommended by Canada Revenue Agency. The appraiser will establish the fair market value of the land without the CE (i.e. the complete bundle of rights associated

with a parcel of land), typically using the direct comparison method – this is the *before* value. Next the appraiser will consider the restrictions in the CE, determine how the restrictions limit the “highest and best use” of the property, and establish the fair market value of the land with the rights restricted by the CE – this is the *after* value. The difference between these numbers is the value of the CE.

There are a number of steps associated with the valuation of the before and after values:

1. The ‘highest and best use’ of the property unencumbered by a CE must be determined. The highest and best use is the most probable and reasonable use under current market conditions. The property does not have to be currently used for its highest and best use. Zoning bylaws should be considered when determining highest and best use.
2. One or all of three recognized approaches to valuing property is applied to determine the ‘before’ value
 - b) income (based on the income generated by a property)
 - c) cost (cost of replacement or reproduction of improvements to property)
 - d) sales comparison (compare sales of similar properties)
3. The highest and best use of the property encumbered by the CE is then determined by analyzing the effect of the easement restrictions on the use of the property. A change in highest and best use is common as a result of the land being encumbered by a CE.
4. One or all of three recognized approaches to valuing property (the income, cost and sales comparison approaches) is then applied to determine the ‘after’ value. The more restricted a property is by the CE, the higher the value of the easement.
5. The difference between the before and after values is the value of the CE.

$$\text{FMV Before} - \text{FMV After} = \text{Conservation Easement Value}$$

Uncertainties associated with appraising CEs include:

1. Disagreement on the highest and best use of a property unencumbered by the CE. Recreational and urban development values can range substantially depending on development constraints of land and municipal zoning policies. Even a disagreement on the degree of development comprising highest and best use can change the value of the CE substantially.
2. In areas where the current land use is the highest and best use, a CE restricting development is appraised as having little value. This is a common situation on agricultural land on the prairies. Though the ecological value of native prairie, wetlands and riparian areas is very high, if development of these areas is not imminent, the appraised value of the CE will be low.

Valuation for Donated Conservation Easements

The “Before and After” method is most commonly used to value donated CEs. The landowner or the conservation organization will hire a certified appraiser to commission an appraisal. Both parties generally review the appraisal before signing a CE. If the CE has been certified through the Ecogift Program the appraisal will be subject to the Appraisal Review and Determination Process. This process was created to ensure the appraisal of ecological gifts is consistent and based on the best accepted appraisal methods. The Panel, consisting of experts from across Canada, reviews each appraisal to determine:

- whether it meets the *Guidelines for Appraisals* established for the Ecological Gifts Program, and
- the basis for a recommendation to the Minister regarding the fair market value of the land or the easement, covenant or servitude and, in doing so, considers whether the analysis, opinions and conclusions in the appraisal under review are appropriate and reasonable and support the fair market value set out in the appraisal.

Valuation for Paid Conservation Easements

Valuing a paid CE is similar to valuing a donated CE, and significant effort has been made to establish purchase values. Finding the balance between what landowners are willing to accept and what conservation organizations are willing to pay is the obvious challenge. This balance is variable by region and dependent on local conditions (e.g. zoning may already preclude a specific activity and therefore no value can be attributed to the loss of the option to do that activity) (Brown and Trout, 2003). Unlike valuing donated CEs which need to be consistent across Canada because they are subject to federal tax laws, the value of paid CEs are more specific to regional conditions. This is not to suggest that the appraised value will be ignored – far from it, an appraised value will be the guide the conservation organization and perhaps the landowner will use in their negotiations.

Due to regional variability a variety of pilot programs were implemented to establish payment values for CEs. These include:

1. Setting a flat fee per acre
2. Negotiating a percentage of fair market value of the fee simple property
3. Negotiating a percentage of the CE value up to a maximum percentage of the fair market value of the fee simple property
4. Conducting an auction, allowing landowners to “bid” the amount they would be willing to accept for a CE.

The first three were simply implemented and the conservation organizations have since adapted their purchase programs to improve uptake or were satisfied with uptake and have maintained their original programming. One organization initially set a flat fee per acre. They have since changed to a percentage of the fair market value as the flat fee per acre approach did not accommodate variable land prices or compensate landowners fairly for what they were giving up. Another organization after consulting with appraisers, lawyers and landowners established a percentage of the fair market value of the fee simple property as the price to be paid for a CE. This program has not changed and has since influenced other organizations in the region.

Split Receipt

Below is an example adapted from the Ecogift website (<http://www.cws-scf.ec.gc.ca/egp-pde/default.asp?lang=En&n=D85A0090-1>).

In determining whether an eligible gift exists, (1) there must be a voluntary transfer of property to the charitable or political organization with a clearly ascertainable value; (2) any advantage the donor receives must be clearly identified and its value ascertainable; and (3) the amount of the advantage generally should not exceed 80 percent of the

donation's value; the eligible gift is the difference between the two amounts.
http://www.ctf.ca/articles/News.asp?article_ID=1939

A landowner enters into a CE with a donee. The easement may or may not qualify as an ecological gift. A tax receipt, as described below would be issued.

- Fair market value of land **before** the easement is **\$500,000**
- The fair market value of the land **after** the easement has been put in place is **\$300,000**. The value of the **easement** is **\$200,000** (If certified as an ecological gift this would be the fair market value on the *Statement of Fair Market Value*).
- The donor receives **\$80,000** (cash) from the donee in return for the conservation easement.
- The eligible amount of the gift and the amount of the **tax receipt** is **\$120,000** - the fair market value of the easement (\$200,000) minus the advantage received by the donor (\$80,000).

APPENDIX B: Criteria for Ecogift Program

In order to be a certified ecogift land must meet the National Criteria for Ecological Sensitivity. Sites that currently or could contribute to the conservation of Canada's biodiversity through conservation initiatives may be certified. The criteria are as follows:

- Areas identified, designated, or protected by a local provincial, territorial, national or international system or body as ecologically significant or ecologically important;
- Natural spaces of significance to the environment in which they are located;
- Sites that have significant current ecological value, or potential for enhanced ecological value, as a result of their proximity to other significant properties;
- Municipal or rural land that are zoned or designated for biodiversity objectives;
- Natural buffers around environmentally sensitive areas such as water bodies, streams or wetlands; and
- Areas or sites that contribute to the maintenance of biodiversity or Canada's environmental heritage.

In addition to the national criteria, Ontario, Quebec, New Brunswick and Prince Edward Island also have provincial criteria. The provincial criteria are complementary to the national criteria and are available at <http://www.cws-scf.ec.gc.ca/egp-pde>. If a province is not listed on the website, only the national ecological sensitivity criteria are applicable in that province.

CEs on land that is eligible for certification may be included in the Ecological Gifts Program as long as the CE is made in perpetuity and registered against the title of the land.

APPENDIX C: Questionnaire for Land Trusts

(Conservation easement = conservation agreement and conservation covenant)

- 1) How many conservation easements do you hold? How many acres do they cover?
- 2) How has your conservation easement program evolved since inception? (e.g., have your easement restrictions changed significantly over time; have you moved from donated easements to paid easements; and why?)
- 3) What is the main purpose of your conservation easement or do you have different sets of restrictions for different conservation purposes? (e.g. set aside, working landscapes, biodiversity, no break – no drain, open space, etc.)
- 4) What is the number of donated vs. paid or some combination (e.g. split receipting)?
- 5) Do you have an acreage goal in a focus area to conserve through conservation easements?
- 6) How many years have you been doing easements? How many conservation easements have you done each year since inception?
- 7) What is the limiting factor of your organization doing more conservation easements? Paid or donated? (e.g., landowner attitudes; funding etc.)
- 8) What percentage of conservation easements are on land used for agricultural production? (i.e. where agricultural production is still allowed under the conservation easement)
- 9) Does your organization take a proactive approach to education and awareness of conservation easements, and, if so, what kind of influence has it had on uptake of easements?
- 10) What are the limitations to uptake of donated and paid easements in your jurisdiction? (e.g., producer attitudes, types of restrictions, wording of the easement document etc.)
- 11) How often is the Ecogift Program used? If not why not?
- 12) If paid how are conservation easements valued? (e.g. % of FMV, full or portion of easement appraisal amount) How do these values compare to fee simple prices?
- 13) What is the range of payment per acre for purchased easements and range of receipted value per acre for donated easements?
- 14) What is your average administrative cost to negotiate and register conservation easements?
- 15) What is included in your administrative costs? (e.g., overhead, staff time, legal fees etc.) Does this vary between paid and donated conservation easements?

APPENDIX D: Education / Communications example - Saving agricultural land for growing food, two Nova Scotia farms protected by conservation easements

by Jennifer Scott, HelioTrust

We are now experiencing two major challenges to our ability to feed ourselves. One is to have knowledgeable, caring, committed people who are willing to be farmers. The other is to have decent land – close to markets, with the right mix of buildings, fields, forest, water, and community.

Even in Nova Scotia, good farmland is a scarce resource. Good farmland close to markets, that is not divided up and interrupted by building lots, is even scarcer. It is worth protecting that kind of land if we want to continue to be able to grow our own food. Because farming is such an economically tricky endeavor, it is tempting for farmers to sell acreage in order to finance part of the farming operation, or to finance retirement. Good land always goes to the highest bidder, and new farmers wanting to get established find it difficult to pay the per acre price demanded by the speculative real estate market.

So how can we save good farmland for farming? One way is to use a conservation easement. Most people are familiar with wilderness conservation, where land of particular ecological significance is protected from development, subdivision, or resource extraction (mining or forestry). The land can be made into a park, or simply kept wild. It may be conserved by outright purchase, or by a conservation easement – a legal document that is attached to the deed, placing restrictions on the use of the land even if the property is sold. The easement is negotiated with the landowner, then registered with the province. A designated “eligible body” takes on the responsibility of ensuring the landowner adheres to the terms.

The Ecology Action Centre (EAC), based in Halifax, has recently been added to the Eligible Body list under Nova Scotia’s Conservation Easement Act. Through its agriculture-oriented sub-group called HelioTrust, the EAC now holds easements with two farms in Hants County: Avonmouth Farm and Red Fox Co-op. EAC does not own the farms, but as the easement holder, it has an interest in ensuring the 300 acres are managed according to the terms of the agreements. To that end, a community-based monitoring system will be developed.

These two conservation easements are structured to protect the farm and woodland from subdivision and development, but they are for “working” land, as opposed to “wild” land. This is an important distinction, as it recognizes the stewardship responsibility of the farmer. The land must be managed in an ecological manner, no matter who owns it. In signing the conservation easement, the farmer gives up some of the real estate value of the farmland, because it cannot be sold for non-farm purposes. This makes the land more affordable for the next person who wants to purchase it for farming.

The real estate value of a farm is a function of what people would be willing to pay for it. This makes farms closest to urban centers, and those with particularly beautiful attributes, the most vulnerable to speculative hikes in value. Theoretically, the value of the conservation easement is roughly equivalent to the difference between the market value of the land and its productive value as a working farm. In negotiating what it would pay the owners of Avonmouth Farm and Red Fox Co-op, the EAC obtained independent appraisals from a farm economist and a real estate professional.

At the moment, neither farm provides a full income for its owners, though both have plenty of potential for increased food production. The owners of Red Fox have been living on the farm for 14 years, growing just enough variety and quantity to keep five or six people well fed. Rupert Jannasch took over Avonmouth in 2003, and has been developing various horticultural and forestry enterprises. He says he is pleased with the easement agreement, but he points out that an agricultural landowner who trades away development rights is assuming a degree of risk.

“Consider a scenario in the future when a landowner, a farmer, no longer wishes to or is unable to farm,” says Jannasch. “He still owns the land, but sold a conservation easement 20 years earlier prohibiting other uses. No young farmers are waiting to fill his shoes. Perhaps new food safety regulations make it impossible to produce food, or there is no longer a willing labor force. . . . What does the landowner do?”

Such uncertainties must be weighed against the benefits of protecting the land. A government program or a larger charitable organization with significant financial resources would be able to achieve the same objective by purchasing agricultural acreage and leasing it to farmers, but in the near future there are no prospects for this in Nova Scotia.

For now, the protection of farmland depends to a large extent on landowners’ commitment to the principle. HelioTrust has set up a special conservation fund, with the interest to be used for monitoring conserved land and covering any legal fees that may be necessary to ensure compliance with the terms of easements in the future. The EAC hopes to increase the fund in order to protect more agricultural land.

There are vulnerable farms all over the Nova Scotia. The new Wal-Mart near Bridgewater was built on a mixed dairy farm. Near Windsor, farmland has been taken out of production to make way for Superstore, McDonald’s, and Tim Horton’s. It is increasingly difficult to farm in Kings County due to urban land demands. In Halifax Regional Municipality, Spryfield used to be primarily agricultural, and the Urban Farm Museum there is an effort to save the last little bit of that farmland for food production. As farmers are forced on to more marginal land, farther from people who want to buy their products, the cost of production rises. If this results in an erosion of the province’s agricultural base, we all pay the cost of reduced food security.

Charitable receipts are issued by EAC for donations. To contribute to the working land conservation effort, specify that the donation is for HelioTrust’s farmland conservation fund.

Ecology Action Centre (EAC) www.ecologyaction.ca

HelioTrust www.heliotrust.ca

APPENDIX E: Letter to the Honourable James Flaherty from Ontario Farmland Trust re. Agricultural Gifts Program



University of Guelph, Richards Building, Guelph, ON N1G 2W1 (519) 824-4120 ext. 52686 | (fax) (519) 824-5730 | farmland@uoquelfh.ca www.farmland.uoquelfh.ca

December 06, 2006

The Honourable James M. Flaherty
Minister of Finance
Department of Finance Canada
140 O'Connor St.
Ottawa, Ontario K1A 0G5

Toward an Agricultural Gifts Program

Purpose:

To propose the establishment of a fiscal incentive program for the protection of agriculturally significant land in Canada; similar to the income tax incentives offered through the Ecological Gifts Program.

Issue:

The Ecological Gifts Program is an outstanding success across Canada, encouraging voluntary donations of ecologically significant lands, or conservation easements, covenants, or servitudes on such lands, to designated conservation agencies by providing tax incentives. We commend your government on the recent elimination of capital gains under this program. However, no such incentive exists for donations of productive agricultural land, which also provides many environmental, social and economic public benefits. We must enable the equal treatment for donors of farmland and make agricultural easements/covenants/servitudes equally efficient and effective.

Background:

The innovative use of conservation easements/covenants/servitudes by the non-profit conservation sector to achieve public goals has expanded rapidly in recent years. Land trusts have involved many rural landowners in making donations of easements/covenants/servitudes (or land outright) and have established credibility by adopting rigorous

‘Standards and Practices’, which are the ethical and technical guidelines for operating a sound land trust.

From its inception in February 1995 to March 31, 2003, the Ecological Gifts Program certified 325 gifts totalling 24,058 hectares valued at over \$67.3 million. While some farmland has been protected under the Ecological Gifts Program because some farms qualify as ecologically significant, donations where the intent is to protect the food production value of the farmland do not currently qualify.

Why protect our farmland?

Protecting Canada’s farmland, especially the high proportion of class one farmland in the best agro-climatic zones of southern Ontario, Quebec and British Columbia, as well as other prime land across the country is essential for many reasons, including:

- Economically, agriculture is one of Canada’s top industries, second only to the auto industry. Agriculture is the engine of the rural economy in many regions of the country, and through the processing and input supply industry, a major component of the national urban-based economy.
- Although Canada is the second largest country in the world by area, only about 11% of Canada’s land can support agricultural production.
- Only 5% of Canada’s land is class 1 and over half of this high quality land is found in rapidly urbanizing Ontario.
- While efforts to track the loss of productive agricultural land are inconsistent across Canada, we know that over 18% of the class 1 land in Ontario has already been urbanized and that we are losing approximately another acre per hour to development in the GTA (see Appendix A for additional details).
- Farmland provides vital environmental benefits from water conservation through wildlife habitat and forestry to scenic rural landscapes.
- If Canada should ever need or choose to be self-sufficient in the production of its food it is critical that we take action now to protect our remaining productive soils.

In spite of the current agricultural commodity price crisis and the resulting financial hardships farmers face, there is substantial evidence that prices will rise in the long run (some analysts are predicting in the short run), as the world becomes more and more dependent on a limited food supply. At the same time, oil shortages and rising prices may put a premium on local production rather than global marketing, or at least to balance global marketing.

Farmland will be protected primarily through regulatory land use planning policies, but such policies can always be weakened by local political decisions, and municipal growth will always move slowly outward onto farmland. The donation of agricultural easements/covenants/servitudes is a strong statement of commitment to reinforce public policies to conserve agricultural land. Therefore programs to support agricultural easements/covenants/servitudes have a critical role to play in supporting public policy. They represent a private, charitable contribution to support a vital public purpose.

There is an urgent need to address the gap in the existing tax incentives for donations of agricultural land so that we, and over 170 other conservation organizations across Canada can provide the private individuals who want to donate farmland or easements/covenants/servitudes on agricultural land with at least the same opportunities that exist for donors of ecologically significant land. Over 70 municipalities and organizations including the Christian Farmers Federation of Ontario, the Ontario Land Trust Alliance, and others have passed resolutions in support of this initiative to create tax incentives for donations of farmland in Canada (see Appendix B for list of municipalities/organizations). The Ontario Farmland Trust is currently working with over 20 potential donors in Ontario who want to protect their productive farmland for future generations but are currently restricted by unfavourable taxation implications. Increasing development pressures, especially around Canada's urban centres is also contributing to the urgency to address this issue.

The Ontario Farmland Trust is poised to work with your staff, as appropriate, to develop an 'Agricultural Gifts Program', which would undoubtedly lead to the permanent protection of some of Canada's best farmland, enhancing the agricultural industry, our environment, and benefiting all Canadians for generations to come.

Options:

There are a number of ways in which an 'Agricultural Gifts Program' could be developed including adding a new branch or category to the existing Ecological Gifts Program. There are also numerous related issues that merit consideration at the same time, including:

- Pilot projects for the purchase of agricultural easements/covenants/servitudes should be established in areas of critical agricultural resources; these types of projects have been particularly successful in the United States, positively influencing public attitudes as well as keeping farmers farming,
- The difficult question of appraising the value of easements / covenants / servitudes must be addressed,
- Any such program must take into account that farmers are usually land-rich but cash-poor; this circumstance will generally reduce the value of donations to farmers in comparison to other donors,
- The special circumstances that are faced by retired farmers donating land must be addressed; charitable donations can trigger an increased net income that results in claw-back of pensions and other retirement benefits that is obviously unintended,
- Income tax receipts could be used over longer periods of time than the 5 years currently allowed, and made transferable to allow donors to utilize the full value of their donations,
- The rules governing participation by firms regarding donations of farmland should be relaxed to provide an incentive for developers to participate in such a program to conserve farmland.

Recommendations:

We call upon the federal Finance Department to establish an ‘Agricultural Gifts Program’ that provides incentives for donors of productive farmland or agricultural easements/covenants/servitudes similar to the very successful Ecological Gifts Program.

We also recommend examining other steps toward making the use of conservation and agricultural easements/covenants/servitudes effective and efficient, such as the purchase of conservation easement (PACE) programs that have proven enormously successful at preserving critical farms and farmers across the United States.

The Ontario Farmland Trust is ready to take up the challenge of working with your government to design such a program to be both equitable and functional for farmers across Canada and we would like to meet with you at your earliest convenience to discuss this issue further. Thank you for your ongoing support of agriculture and publicly minded donors.

Yours truly,

Stew Hilts
Chair, Ontario Farmland Trust

List of Appendices

Appendix A: Fact sheet on Farmland Loss in Ontario

Appendix B: List of municipalities/organizations supporting this proposal as at 07/12/06

Appendix C: Ontario Farmland Trust brochure

Appendix D: Ontario Farmland Trust Land Securement Strategy and Criteria Document