



As Vice President, Donor Engagement at the Calgary Foundation, Laily Pirbhai's extensive charitable gift planning knowledge has earned the Foundation a place at the forefront in philanthropic services.

Creating a Legacy through Ecological Gifts

LAILY PIRBHAI

In his Will, the late Daryl K. (Doc) Seaman granted an easement on a portion of his OH Ranch property to the Southern Alberta Land Trust Society (SALTS) for the

purpose of protecting, conserving and enhancing the environmentally sensitive OH Ranch. These lands have significant agricultural, ranching, wildlife habitat, water, forest, scenic open spaces, aesthetic, ecological value and significant biological diversity which he defined as his "conservation values." In addition, Doc also established a perpetual endowment Fund at the Calgary Foundation, the income from which was to be used for the ongoing monitoring and management of this easement held by SALTS.

Doc's commitment to the environment and his foresight in entrusting a land steward to fulfil his wishes, is a fine example of a strategic charitable gift for an everlasting legacy. What makes Doc's foresight even more pragmatic today is the recent regime for Gifts of Ecologically Sensitive Land (ESL) announced in the federal budget on March 22, 2017, which prohibits private foundations from receiving gifts of ESL.

As the budget explains, the ability of private foundations to receive such gifts gives rise to potential conflicts of interest. The budget cites the following example: "[W]here a director of a private foundation donates an easement in respect of a property to the private foundation, the individuals responsible for enforcing the private foundation's rights under the easement would often be the same persons as those against whom the rights must be enforced."

The Calgary Foundation has worked with several of the registered Canadian charities recognized by Environment Canada as land stewards with the Ecological Gift Program (see Resources on page 12) in enabling such gifts. This issue of *Advice to Advisors* provides an overview of what a professional advisor needs to know to effectively support clients with ecogift planning. It includes a comprehensive list of resources, shares a personal narrative of a family "why" and includes a reference to an overlooked tax planning measure using the Capital Dividend Accounts within a corporation.

Feel free to share this publication with your peers, clients and with development professionals in the charitable sector. I also invite you to forward ideas for future issues.

With gratitude.

2 Gifts of land: Protecting Canadian lands for generations to come
MELANIE McDONALD, COLIN POON and SHANNON JAMES

7 For love of the land
JUSTIN THOMPSON

9 The double benefit of making an eco gift
KATIE IONSON

10 Good land stewards on historic family property
NATURE CONSERVANCY OF CANADA BLOG

12 Additional eco-gifting resources



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Gifts of Land: Protecting Canadian Lands for Generations to Come



MELANIE McDONALD, COLIN POON and SHANNON JAMES



In recent years, there has been significant media coverage of charitable gifts of land in Canada. As part of their estate planning, individuals and families have demonstrated increasing interest in preserving their landholdings, as a means of celebrating and cementing their legacies for posterity, while simultaneously fostering their preferred charitable causes and philanthropic objectives. Locally, a number of notable Albertans have made significant donations of family lands to charities, universities and other community partners, including a 2010 donation of a 5,000 hectare property to the University of Alberta Rangeland Research Institute.¹

¹ University of Alberta Rangeland Research Institute, "Mattheis Research Ranch" <http://rri.ualberta.ca/About-Us/Our-Facilities/Mattheis-Research-Ranch>

Ecogifts

Gifts of ecologically sensitive land, in particular, are on the rise in Canada. To complete such a gift, the donor makes a gift of land to a charity that acts as the steward to ensure ecologically sensitive land is protected. If the land qualifies for Canada's ecological gift program in accordance with Canadian tax laws (ecogift) then the donor gets additional tax benefits as compared to a donation of cash to the same charity. When the situation is right, an ecogift is a very unique gift that protects Canada's nature and habitat for future generations.

The donor is responsible for determining whether the land qualifies for Canada's Ecological Gift Program. Environment Canada reviews the following factors:

- Location – has the area where the land is located been designated by the government or other organizations as ecologically significant or important;
- Proximity – to other ecologically significant properties;
- Designation – zoned or designated for biodiversity objectives;
- Buffers – does the land protect other environmentally sensitive areas such as streams and wetlands; and
- Contribution – importance of the lands to the maintenance of Canada's environmental heritage.

Environment Canada reviews the qualities of the land, the above-noted factors, and thereafter determines whether the land qualifies as ecologically sensitive. If the land does not qualify as ecologically sensitive it can still be donated but the donor will not receive the extra tax benefits given to ecogifts.

If the donor wants to make an ecogift, they will have to find a charity who will work with them to manage and protect the property. Environment Canada also screens potential charities who act as land stewards to be a part of the Ecological Gift Program. Such

organizations must be registered Canadian charities that are committed to the conservation and protection of Canada's environmental heritage. Land stewards are often referred to as "land trusts" but also include municipal, provincial and federal levels of government as well as other environmental, animal rights and research-focused universities and charities.

Next, the donor and steward work together to determine whether the fit is right. There are a number of issues that should be reviewed, including:

“Professional advisors should prepare the donor for a discussion regarding funds to assist the steward with the ongoing costs of care and to monitor the ecogift in the future...”

- Nature of the gift - outright gift of land vs. conservation easement;
- If a conservation easement, what are the restrictions imposed on the donor/land owner with respect to the donor's use of the ecologically sensitive land;
- Payment of the ongoing costs, including: property taxes, identifying and remediating environmental hazards, and liability insurance;
- Preparing a management plan and monitoring regime; and
- The process to obtain a valuation of the ecogift.

The donor's professional advisors should prepare the donor for a discussion regarding funds to assist with the ongoing costs of the steward to care for and monitor the ecogift in the future as well as the general



operation of the steward organization. It is a reality that there will be ongoing costs to protect the ecogift.

Once these steps have been completed, a package is sent to Environment Canada to confirm that the gift is certified as ecologically sensitive land. The package will include: a) a description of the land; b) the proposed steward; and c) a formal appraisal. There is flexibility in the process and the donor

can have Environment Canada certify the land as ecologically sensitive before the cost of an appraisal is incurred. If the land qualifies for the ecogift program, Environment Canada issues a Certificate for Donation of Ecologically Sensitive Land, a Statement of Fair Market Value and the steward charity will issue a donation receipt. These three items are filed with the donor's tax return the year that the ecogift is made.

Tax Benefits

Generally speaking, the following are the additional tax benefits that the donor will receive if Environment Canada certifies that the gifted land is ecologically sensitive:

- The taxable capital gain related to the increase in value of the land since it was purchased is eliminated;
- There is no limit to the value of the deduction/credit in a given year (generally it is limited by the annual income of the donor); and
- The donation value is certified by the Canadian government, which provides the donor with certainty with respect to the amount of the donation receipt.

As with all gifts to registered Canadian charities, the tax credit can be carried forward. **In 2014 the carry forward period for gifts of ecologically sensitive land was increased to 10 years from the standard five years, creating further incentive to make gifts of this nature.**

Although these gifts are perpetual in nature, there may be a situation where the steward is of the view that there should be changes to the terms of use of the property (i.e., as outlined in the conservation easement) or even the disposition of the property. In that case, the steward is required by law to get the approval of Environment Canada. Donors of ecogifts will be happy to know that Canada's tax laws include very severe penalties (50% of the value of the gifted

land) if the steward does not obtain Environment Canada's approval or does not properly protect the ecogift.

There are many special and ecologically sensitive parts of Canada, including wetlands, parks, grasslands, and animal corridors. In the right situations, donors and charities who act as land stewards can work together to ensure that such treasures are properly protected.

Since the inception of Environment Canada's Ecological Gifts Program, hundreds of Canadians have donated ecologically sensitive land in the hopes of preserving Canada's tremendous biodiversity and wildlife habitats, and protecting species at risk. The program has been embraced by landowners across Canada and Alberta, and many families have chosen to memorialize their attachment to their unique pieces of land in this fashion. For example, in 2006, an anonymous donor made a testamentary gift of 1,000 acres in the Sounding-Sunken Lakes region of East Central Alberta to the Nature Conservancy of Canada under the program. The donated lands are made up of grass and shrubland with varied topographical and ecological features such as mud flats, marshes, saline lakes and sand dunes, straddling the boreal forest and aspen parkland zones. This gift has enabled the creation of a preserved Central Parkland area in a region that has been significantly impacted by human activities.²

² Environment Canada, "Ecological Gifts Program" http://publications.gc.ca/collections/collection_2010/ec/CW66-288-2010-eng.pdf (accessed January 3, 2017).

Since the Ecological Gifts Program's inception in 1995:

- Canadians have made over **1260** ecological gifts of land with a value in excess of **\$807 million**.³
- More than **150** registered charities have become eligible recipients under the Program.⁴
- Over **180,000 hectares** of land have been donated across the country, protecting areas of national or provincial significance, housing some of Canada's species at risk, and protecting a wide variety of wildlife habitats.⁵
- These gifts have allowed Canadians who own ecologically sensitive land to partner with all levels of government, community partners and other stakeholders to **leave a lasting legacy** by protecting nature and preserving Canada's rich biodiversity for future generations.

Conservation Easements

For donors who wish to maintain ownership of the ecologically sensitive land in question, but also wish to commit to ecological preservation of such land while enjoying the tax benefits that arise on making an ecological gift, the conservation easement is another option to consider.

While a donor who gifts a conservation easement will not have to transfer their land outright, they will give up certain valuable rights in respect of their land. The exact terms of a conservation easement will vary depending on the circumstances and the land involved, but they generally include legally binding covenants which preclude certain environmentally unfriendly uses of the land. Some examples of common ecological easements include covenants not to develop certain lands, use certain materials or carry out certain activities.

Conservation easements can also include positive obligations to institute certain conservation activities, such as monitoring and stewardship, or to carry out specifics, such as agricultural practices. Increasingly, donors are choosing to develop a management framework for the continued preservation and protection of the subject land.

As with any gift of ecologically sensitive land, the granting of a conservation easement requires compliance with both federal and provincial law and policies. In Alberta, conservation easements may only be granted to a qualified organization as defined by the Alberta Land Stewardship Act (ALSA). Generally, qualified organizations will be a governmental body, such as the province, a municipality or specific ministry, or a land conservation charity. In Alberta, land conservation charities typically are referred to as land trusts or conservancies. The ALSA sets out a number of important rules in respect of conservation easements, including allowable purposes, enforcement mechanisms, modification, registration and legal nature. However, the ALSA leaves many possibilities open, and crucial details of a conservation easement will be set out in the agreement creating the easements.

A number of complexities arise in respect to creating and gifting conservation easements:

- The granting of a conservation easement is administratively intensive. Several initial reports and assessments must be produced, and certain notifications are required under provincial law.

³ Government of Canada: Environment and Climate Change Canada, "Ecological Gifts Program" (November 18, 2016), <http://www.ec.gc.ca/pde-egg/> (last accessed January 6, 2017). [Ecological Gifts Program]

⁴ Government of Canada: Environment and Climate Change Canada, "Recipients" (July 8, 2013), <http://www.ec.gc.ca/pde-egg/default.asp?lang=En&n=CA6B251B-1> (last accessed January 6, 2017).

⁵ Ecological Gifts Program, *supra* note 1.



- The federal requirements for certification under the Ecological Gift Program must be considered. The drafting of a conservation easement can be complex, as there are many important issues to consider. It will be important to clearly define the rights and activities covered by the easement, being mindful of future needs and conservation goals.

Additionally, valuation of conservation easements can be more difficult than valuation of an outright transfer of the ecologically sensitive land. However, practical methods of valuation can still be applied by assessing and comparing the value of the land with and without the limitations and obligations imposed by the conservation easement. This means that conservation easements will have a greater value, and therefore a greater tax benefit to the donor, where the rights being surrendered by the donor significantly limit and devalue the land in question. For example, a conservation easement which prevents all development on a piece of land that would otherwise be ideal for residential or commercial activities will carry a high value. Grantors of conservation easements may, in some circumstances, choose to receive payment for part or all of the value of the conservation easement, either in cash or as special consideration for receipt of a development permit. In such circumstances, the ability of the grantor to receive the tax benefits relating to donations of ecologically sensitive land will be impaired.

“Donors should work closely with their professional advisors to ensure that the conservation easement properly reflects their intentions and is best suited to withstand challenges in the future.”

Conservation easements are perpetual in nature, as they are intended to preserve ecologically sensitive land for all future generations. This perpetual nature means that such easements are likely to be subject to challenge at some point, so great care must be taken in drafting. Donors and recipients should ensure they work closely with their professional advisors to ensure that the conservation easement properly reflects the intentions of the parties and is best suited to withstand challenges in the future.

Supported by community partners including provincial and municipal governments, conservation easement organizations and support organizations, many Alberta families have chosen to memorialize their commitment and attachment to land in this fashion. Donors considering an ecological gift of land may wish to consider this highly customizable vehicle to achieve their conservation goals.

Although official figures are not readily available, according to a survey of a number of conservation organizations in Canada:

- In excess of **1,359** conservation easements have been registered in Canada, covering over **318,807 acres** of private land.
- Many of these conservation easements occurred within **agricultural regions** of Canada.
- The most popular objectives for the creation of conservation easements include (1) conservation of biodiversity; (2) protection of water and water resources; (3) protection of agricultural zones.⁶

⁶ Kimberly Good and Sue Michalsky, Good AgVentures Inc. for Agriculture and Agri-Food Canada, “Summary of Canadian experience with conservation easements and their potential application to agri-environmental policy” http://publications.gc.ca/collections/collection_2011/agr/A125-17-2011-eng.pdf (accessed January 6, 2017).



Justin Thompson spent much of his youth exploring southern Alberta's foothills. He got to know the Southern Alberta Land Trust Society (SALTS) when he started looking for options to preserve his family's land west of Pincher Creek. His positive experience has led to him working full-time on private land conservation as SALTS' Executive Director.

For Love of the Land



JUSTIN THOMPSON

Several generations of **Justin Thompson's** family made their life and living from southwest Alberta land. When that land was passed on to him, Justin chose to honour those past experiences by protecting the native landscape through the use of a conservation easement.

My dad's family moved to the Pincher Creek area just after the turn of the century and like his mother 30 years before, he was born there in 1944. Although he moved to Calgary in his teens his connection to the land in southwest Alberta, and the family who continued to farm and ranch there, remained a strong influence all his life.

Consequently, in 1969 my parents bought land in the foothills near the Crowsnest River. Having explored and helped run cattle on the property since I was first able, it also became a part of my identity. I have spent my life marvelling at the wildlife, fresh water, diversity, and productivity of the landscape. Over my first 30 years, however, the nature of the surrounding area changed with more subdivision and development. This change was simply part of a larger trend of growth in Alberta. To give some sense of the rate of change, when my Grandmother was born Calgary was less than 50,000 people. When my Dad was born it was less than a 100,000. When my grandmother passed away in her 90's, Calgary had grown to roughly a million. A

million people in one lifetime. It became clear to me that the status quo would eventually result in most of southwest Alberta's privately owned native landscapes being fragmented, along with the watersheds and wildlife habitat they support.

"... when my Grandmother was born, Calgary was less than 50,000 people."

When my father passed away suddenly and the land came to me, I decided to be proactive in protecting the conservation values that remained in the area. The tool available to me was to work with a land trust to place a conservation easement on our land that would restrict development in perpetuity. Although I knew it would tie the hands of future generations, I simply did not see development as ever being compatible with the wildlife and watershed values which the land supported.



I also hoped that if I decided to protect my land that perhaps some of my neighbours might choose to do the same. If so, collectively we could create something for future generations that would be even more valuable than the real estate development value of each of the parcels on their own.

“...over the past ten years, four of my neighbours also chose to place conservation easements on their property.”

I ended up working with both the Southern Alberta Land Trust and the Nature Conservancy to place conservation easements on most of our land. In return, I receive charitable receipts through the federal Ecological Gifts Program. To my delight over the past ten years, four of my neighbours also chose to place conservation easements on their property. The result is that there are now 1,400 acres (just over two square miles) of land that has been protected in our foothills.

I don't regret my decision to put conservation easements on our property. Now that I have two boys I feel even better about the possibility of being able to pass the land on to them in a healthy state.

SALTS - How Does Estate Planning = Conservation?

For some, the link between good agricultural estate and succession planning and land conservation may not be obvious. However, many farms and ranches are unwillingly sold for development because families did not start succession planning at the appropriate time. Good succession and estate planning conserves ranches, rangelands and ranching communities. It does so by helping to maintain “working ranches” - keeping ranchlands for ranching, rather than seeing them converted to non-agricultural uses.

The average age of Alberta's ranchers is increasing at a rapid pace.

Individuals heading single person agricultural operations in Alberta averaged 50.2 years of age in 1996 as compared to 48.9 in 1991. Many of these people will retire in the next 10 to 15 years, resulting in a tremendous amount of land changing hands.

The continuing challenges to ranching profitability, low recruitment of new individuals into ranching and

escalating land prices will put many of Canada's most productive and ecologically significant landscapes at risk of being permanently lost to development. This risk will increase the need for ranching families to have well-thought-out land and business succession plans.

SALTS wants to help ranchers understand the options and tools available to preserve the productive, environmental, cultural, scenic and aesthetic values of their ranchlands for future generations. Often, long-term land conservation objectives cannot be properly contemplated without addressing the issues of succession, tax and estate planning. SALTS aims to integrate rangeland, wildlife habitat and watershed preservation into ranch business and succession planning.

For more information specifically about conservation easements and their financial implications please go to

<https://salts.land/conservation-easements-details/>



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The Double Benefit of Making an Ecogift



Did you know that the capital gain inclusion rate is zero for gifts of ecologically sensitive land?

The Canada Revenue Agency was recently asked to confirm whether, for a gift of ecologically sensitive land, the full amount of the capital gain realized by the corporation would be added to the corporation's capital dividend account.

Normally, the amount added to a corporation's capital dividend account on a disposition is the difference between the capital gain realized by the corporation and the taxable portion of that capital gain. For certain charitable gifts, including gifts of ecologically sensitive land, certified cultural property and publicly-traded securities, the capital gain inclusion rate is zero. There is therefore a double benefit to making such gifts because, in addition to a charitable tax deduction, for a corporation, or credit, for an individual, capital gains tax on the disposition is avoided.

Make that a triple benefit, where the gift is made by a corporation. The Canada

Revenue Agency confirmed that with such gifts, the full amount of the capital gain realized by the corporation from its disposition of the gifted property is added to the capital dividend account. This allows additional designated capital dividends to be paid out to shareholders on a tax-free basis.

On a non-tax note, a news story has surfaced which provides an interesting example of "reaching beyond the grave". A woman in Calgary is attempting to have her 1970's home designated as an historical property. This designation would prevent the razing of the house or any changes to its interior or exterior following her death. The notion of a 1970's home being deemed "historical" may strike many as strange (particularly if one was born mid-century). However, the house itself is spectacular. For a fun break, check out these [photos](#).

This article originally appeared as a blog post on "[All About Estates](#)".

This article originally appeared as a Nature Conservancy of Canada blog post and is re-printed with permission.

Good land stewards on historic family property



If you want to see a good example of a family that cares about their land, take a look at the Dennis family. The earliest records of their ancestors settling on the land date back to before Alberta was even a province, and because of a conservation agreement with the **Nature Conservancy of Canada (NCC)**, the ranch will remain in close to the same pristine condition that it was when Wilson Dennis first settled on the property in 1902.

Wilson and his brother Ben both moved to Canada from England and spent time in Washington and Montana before making their way north to settle in the foothills of Alberta's Rocky Mountains, where the Dennis family continues to reside today.

Nowadays, the highway connecting the foothills to Kananaskis Provincial Park meanders alongside the Dennis ranch, but in Wilson Dennis' days, there was no paved road through the pass. Therefore, armed with a team of horses, he took it upon himself to dig a road into the hill, which became the main route for traffic into the mountains.

In the valley, Wilson built a cabin, which is still standing, carefully maintained by generations of the Dennis family.

"Wilson was sweet on the girl up the road and had thoughts of marriage," said Val Dennis, whose parents Verne and Ida were responsible for placing the agreement on the property back in 2014. "He built the cabin hoping she would move in with him, but she never did."



Val Dennis, standing inside the roots of a giant Douglas-fir tree on his ranch. (Photo by NCC)

The historical cabin was a work in progress for Wilson Dennis' entire life.

"He started building the kitchen in 1902, and it's probably one of the oldest surviving buildings in this part of the country."

Although Val and his five siblings have since left the ranch, they still remain in the province and return home often. The land is home to elk, moose, deer, cougar and grizzly bear, but centuries ago, it was also home to a Blackfoot camp: Val has found arrowheads in the valley that have been dated by University of Calgary and Glenbow Museum archeologists to be more than 3,000 years old.

Val attributes the good condition of the land today to the idea that all of the ranchers that have come before him have cared for the land the same way his family does. "All the good ranchers in this area are conservationists," he says. "People care about the land; it's good business to take care of your property. If you have more grass you can run more cows; nobody that wrecked it stayed in business here."

To keep the grass healthy, the Dennis family grazes youngstock elsewhere over the winter and uses rotational grazing in the summer to ensure no pastures are overgrazed, which would destroy the condition of the grass that sustains the cattle. They also restrict the use of motorized vehicles to allotted trails, and regulate hunting on their land — a challenge from external pressures.

For now, the future of the ranch looks bright. Val says that he doesn't want to see any profit from selling the ranch; he wants to keep it in the family for generations to come. He says that since it can pay for itself, they'll "keep it going, no matter what."



Val Dennis on Dennis Ranch. (Photo by NCC)

"... all of the ranchers that have come before him have cared for the land the same way his family does."

"It's my biggest fear, and if it isn't my generation, maybe it's our kids or our grandkids that come along and think 'okay, let's go for the money.' That might come no matter what, but at least with the conservancy's agreement it's not going to get built on. Through our efforts and people like us, we're going to do our best to keep it the way it is.

"You don't see a single house down this valley and if it wasn't for the efforts of the Nature Conservancy [of Canada] you'd have houses all over the place, wherever there was space for one. If we ever wanted to sell this place we could have subdivided it and developed up and down this valley. But once you do that, this is all gone. You'll never get it back."

Making a Charitable Gift of Land ADDITIONAL RESOURCES

Alberta Regional Land Trust Alliance

The Alberta Land Trust Alliance (ALTA) is a not-for-profit charitable organization that strives to ensure Alberta's future landscapes are rich in biodiversity and have strong ecological integrity. They work with Alberta's land trusts and Alberta's land trust community.

Alberta Land Trust Programme

Purpose, content and amendments of the Alberta Land Stewardship Act.

Canadian Association of Farm Advisors (CAFA)

The Canadian Association of Farm Advisors is a non-profit professional organization dedicated to assisting farm businesses by increasing the skills and knowledge of farm advisors.

Conservation Easements in Alberta

This website was created by the Environmental Law Centre and Miistakis Institute to help landowners, land trusts, municipalities and others find answers to questions related to conservation easements in Alberta.

See also, [Legal Aspects of Conservation Easements](#)

Ducks Unlimited - Alberta

Alberta is home to DUC's largest concentration of habitat projects. With more than 2,000 projects covering 2.3 million acres, Alberta is home to DUC's largest concentration of habitat projects.

Federal Canadian Association listing Real Estate Appraisers with Ecological Gifts Certification

Federal Ecological Gifts Program

Government of Canada Ecological Gifts information page.

Nature Conservancy of Canada

The Nature Conservancy of Canada's first project in Alberta was the acquisition of Wagner Bog in 1970: 320 acres (130 hectares) of highly significant wetland habitat. Since then, we have completed more than 200 projects, which protect more than 234,000 acres (94,700 hectares) of this province's most ecologically significant land and water.

Southern Alberta Land Trust Society

The Southern Alberta Land Trust Society (SALTS) is a locally-based charitable non-profit society dedicated to protecting the environmental, productive, scenic and cultural values of southern Alberta's grasslands, woodlands, and wetlands, both along the Eastern Slopes and in our prairie regions.

Western Sky Land Trust

Western Sky Land Trust recently completed a conservation easement (CE) for the Mattheis Ranch, a 12,000 acre research facility donated to the University of Alberta by Ruth and Edwin Mattheis. It is home to the Rangeland Research Institute (RRI), which conducts innovative research on grassland ecology, land reclamation and grazing systems.