



## **American Friends of Canadian Conservation**

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### **Conservation Lands Program Overview**

#### **Background**

U.S. taxpayers own as much as 80% of the acreage in some of Canada's most scenic and beloved landscapes from the rugged coasts of the Maritime provinces, to pristine wetlands in the Great Lakes, to old-growth forests of British Columbia, and many other geographies and environments in between. Canadian conservation organizations and their colleagues from the U.S. created American Friends of Canadian Conservation (American Friends) to make it legally and financially feasible to protect the most important of those properties.

In the past, Canadian conservation organizations, and U.S. landowners who wanted to donate land or a conservation easement, were frustrated by major tax obstacles. If they donated to a Canadian charity, these landowners forfeited the U.S. income tax deduction that would provide a potentially significant financial incentive. If donors gifted their properties to a U.S. charity, the transaction would trigger substantial Canadian capital gains tax on the appreciated value of the donated land or easement. American Friends removed those obstacles so that treasured landscapes of Canada owned by U. S. taxpayers (who may or may not be American citizens) could be conserved for future generations.

Donations to American Friends produce the ideal bi-national tax incentives for U. S. donors, making it possible for Canadian conservation organizations to secure the most strategic properties at the lowest possible cost. Qualified gifts are eligible U.S. income tax deductions because American Friends is as publicly-supported 501(c)(3) U.S. charity. In addition, gifts are effectively not subject to Canadian capital gains tax because American Friends is a Prescribed Donee under the Canadian Income Tax Act regulations. To make this ideal tax scenario possible, American Friends' cross-border land conservation projects must meet tax and charitable law requirements and procedures on both sides of the border, as described in this overview.

For in-depth information about cross-border taxation and the incentives for conservation, download [Save Some Green: a handbook for U.S. taxpayers who own land in Canada](https://conservecanada.org). It is available at <https://conservecanada.org>.

#### **American Friend's Partnership Model**

Protecting Canada's natural heritage is American Friends mission. Its cross-border transactions are the mechanism by which it accomplishes that objective. Partnerships with Canadian conservation entities make those transactions possible. Each one supports the land conservation vision and goals of a Canadian partner, which we refer to as a Grantee because American Friends plans to grant donated properties to our Canadian counterparts.

Our conservation projects are generally initiated and led by a Grantee but completed through extensive collaboration. Land trusts, other types of conservation organizations, government agencies and First Nations can become Grantees. American Friends relies on Grantees' knowledge of their area and its important conservation priorities.

Grantees manage the land owned by American Friends (and monitor and enforce the terms of easements we hold) as though they own the properties or hold the conservation easements themselves. All costs related to both procurement and stewardship are the responsibility of the partnering Canadian conservation organization and/or donor.

Land and easement donors sometimes pay these costs because they are motivated to protect their Canadian properties, and the U.S. tax benefits may make it feasible to do so. (See the case studies in [Save Some Green](#) to understand the potential financial incentives.) In other instances, a landowner may not be willing or able to cover the costs, so Grantees provide the funds, recognizing it will be less expensive than buying the property. Some Grantees have been able to obtain philanthropic gifts for those expenses, which produce a high conservation return on a relatively small investment.

American Friends accepts title to the property, or holds the conservation easement, upon completion of the gift. Our level of involvement in transaction details varies greatly from project to project, based on the capacity and needs of the partner organization and the caliber and experience of the landowner's professional advisors.

## **The Role of American Friends**

Cross-border conservation (the term for U.S. taxpayers protecting land they own in Canada) is a specialized area of practice that demands in-depth knowledge of bi-national taxation and law. Therefore, only a small handful of people have direct experience with these gifts. American Friends is the only organization dedicated to working in partnership with Canadian organizations and can provide the expertise to steer these transactions through the maze of requirements. Attorneys and accountants are generally familiar with the regulations of one country. Those with experience in both countries normally do not have experience conservation transactions. American Friends provides a unique service through its involvement in a gift – ensuring that all elements of the transaction are completed in accordance with the tax and legal requirements of Canada and the U.S., so that the donor's estate planning, financial and conservation objectives can be realized.

Some of the top US and Canadian tax and legal advisors were involved in establishing American Friends, or have served on its board, are volunteers or working as paid representatives. Together they handle all the following essential tasks associated with each land or easement donation:

- **Project management:** In the twelve years since receiving its prescribed donee designation in Canada, American Friends has completed 32 transactions, permanently protecting almost 4,000 acres of high priority land and water in six provinces, through gifts and purchases from more than four dozen U.S. taxpayers. These transactions have an appraised value of over \$18M USD. There are almost innumerable points along the way where our experience helped a proposed gift become a conservation legacy, instead of an expensive learning exercise.

Examples of project management assistance include:

- Helping the Canadian land partner assess the feasibility of a proposed transaction
- Working with the partner to structure a transaction that provides the best possible bottom-line for the landowner
- Educating the donors' tax and legal advisors about the intricacies of the cross-border process
- Assisting appraisers with developing valuations/reports that meet IRS guidelines
- Supporting donors' application to Revenue Canada for capital gains exemption
- Guiding the completion of all "due diligence" inspections
- Advice on creating a stewardship plan and associated budget
- Managing the documentation required by the IRS for the gift to be tax deductible in the U.S.

On average, each completed land gift requires 70 hours of project management to ensure that all the details completed and done correctly from start to finish. The average required by a conservation easement gift is 134 hours.

- American Friends' U.S. legal counsel: Konrad Liegel is one of the top tax attorneys in the U.S. specializing in conservation transactions. He has been involved with American Friends since its inception. His oversight ensures that everything we do comports with all IRS requirements, which is a tremendous benefit for land donors.
- Canadian legal counsel: As a recipient of title to Canadian land (or interests such as conservation easements) American Friends requires that a qualified Canadian lawyer reviews all elements of the land or easement gift. Involving top-notch Canadian counsel also benefits our land and easement donors. (Donors must also have Canadian representation to complete their gift to American Friends.)
- Administration and accounting: After the real estate transaction in which AF acquires title or a restrictive covenant is complete there is still critical work associated with donors' U.S. tax filings. American Friends has specific responsibilities as a recipient of major charitable gifts. Most U.S. accountants are not familiar with cross-border conservation so American Friends almost invariably must help donors with the documentation needed for their US tax return.

American Friends covers these costs through fees-for-service. Although attorneys and accountants generally charge by the hour, AF uses a set transaction fee so that Grantees and donors can know the cost in advance. The amount of the fee is generally far less than the actual costs of those services because so much of the work is done pro bono.

### **Costs of a cross-border land or easement donation**

American Friends, its partners and donors benefit from reduced cost and pro bono counsel from some of the most experienced conservation and real estate attorneys in the U.S. and Canada. Transaction fees paid to American Friends help cover the costs of the legal, project management, accounting and the extensive administrative work directly connected to cross border donations and all the related tax documentation.

The cost for **fee title projects is \$10,000 USD** and **\$15,000 USD for conservation easements**, due to their additional complexity. The fees are divided between the three transaction phases (20% for Phase I, 50% for Phase II and the final 30% for Phase III). If a transaction is not completed for any reason, fees already paid cannot be refunded.

The partner organization, the donor, or a third party or philanthropy can pay the fees. Land conservation organizations should feel completely comfortable discussing this transaction cost with potential donors, knowing that the U.S. tax deduction is likely to more than cover all expenses, provided the donated property interest has a market value of at least \$200,000.

Grantees receive a complimentary initial project consultation with American Friends' Program Coordinator to help launch new gifts. Subsequent consultation is available to any of the project participants on a fee-for-service basis.

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

Please note that the fees are based on a normal level of project complexity. A project requiring AF to obtain extensive legal, estate tax or other professional advice and guidance, may result in additional costs. The partner and the donor are responsible for the costs of their own legal, tax and financial advice.

### **Long-term ownership and stewardship**

American Friends' conservation mission is best accomplished by conveying the conservation lands and easements it receives to qualified conservation organizations in Canada for permanent stewardship. The original donations, however, must be made to American Friends if the donors will be claiming a tax deduction in the U.S. Tax benefits are available only when the recipient of a gift of land or easement is a qualified entity that is based in the U.S.

The donor's tax deduction would be jeopardized by any upfront guarantee regarding American Friends' subsequent transfer of the donated property to the Canadian partner organization. Although IRS rules prevent donors from making their gift contingent upon a future transfer of the land/easement to the Canadian partner organization, they make their wishes known in the Letter of Intent that is part of the transaction process.

To protect the donor's charitable deduction, the land/easement donation to American Friends and the subsequent transfer to the Grantee are two separate processes. American Friends' Board of Directors must make an independent decision regarding transfers of land or easements, based on a request from the Canadian partner. Please talk to the Program Coordinator about the transfer process.

### **Major Steps for Cross-Border Land Conservation Projects**

**Qualify as a Land Grantee:** Conservation organizations interested in cross-border land conservation should apply to be a Land Grantee. Visit American Friends' website

(<https://conservecanada.org>) for complete information on how to apply. The application process ensures that American Friends is partnering with publicly-supported charities, government agencies or First Nations whose missions are aligned with American Friends' charitable purposes.

**Propose a Land Conservation Project:** American Friends welcomes inquiries about potential conservation transactions. Contact the Program Coordinator to discuss possible gifts or split receipt donation. After an organization has been approved as a Land Grantee, it can formally propose a collaborative land project. Generally, grantees lead the project, and provide the main point of contact for the landowner and their advisors. But each partner's capacity and project are unique. Grantees have primary responsibility for collecting all the information and coordinating the usual legal, survey, baseline study and other activities typically associated with conservation land projects. American Friends supplies thorough, detailed instructions, checklists, and template documents in addition to highly-skilled support to the Grantee, the donor, and the landowner's advisors throughout the process.

### ***The Three Phases of a Land Conservation Project***

- **Phase I Inquiry and Feasibility Assessment:** The first step is submitting an Inquiry and Feasibility Assessment form together with associated maps, photographs, and other narrative information. A signed Letter of Intent from the donor demonstrates the landowner's interest in making the gift to American Friends. The information in the Assessment provides the rationale for the project, explains how it fits within the Grantee's conservation priorities, and supplies key information about the land, the donor, and the proposed project. American Friends provides template forms and examples of successful Phase I proposals and assists with their development.
- **Phase II Due Diligence:** After American Friends' board approves the project in Phase I, the Grantee and American Friends develop a mutually acceptable *Procurement and Management Agreement*. The Agreement confirms each partner's roles and responsibilities for the project and assures American Friends that the partner entity is committed to caring for the property, or monitoring and enforcing the easement, if AF accepts the proposed gift. In addition, the Agreement confirms the responsibilities for paying project and management costs.

American Friends provides a template *Procurement and Management Agreement*, a checklist for Phase II activities and templates for the baseline study template, environmental assessment, and a cross-border conservation easement. During this phase, the Grantee coordinates completion of due diligence activities such as appraisal, title/legal work, property survey, appraisal, easement or deed drafting, baseline study and environmental assessment, and Canada Revenue Agency approvals for non-resident dispositions of land.

Refer to *Special Requirements for Conservation Easements*, below, for more detailed information on partial interest donations.

American Friends mentors its partners and the landowner's advisors throughout Phase II so that all the due diligence inspections are done correctly.

- **Phase III Completion and Registration:** After all Phase II activities have been completed, and documentation approved, the project can move to completion. The partner is responsible for working with the landowner to secure all the documents necessary and for providing these for approval. American Friends provides a Phase III checklist and template documents for closing. The Board of Directors must authorize acceptance of the donation.

Throughout the three phases, American Friends' legal counsel, Program Coordinator and members of its board help to structure the best possible conservation transaction.

**Getting Started:** To initiate a land or easement gift, or to learn more about the Conservation Lands Program, please contact Sandra Tassel, American Friends' Program Coordinator. You can also find many of the documents described above, together with other more detailed materials, at <https://conservecanada.org>.

### **Special Requirements for Conservation Easements and other Gifts of "Partial Interest in Land"**

#### **Mineral Development Risk**

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

#### **AF's Eligibility to Hold Conservation Easements in Your Province**

Before completing our first conservation easement project in each province, we will work with the partner organization to ensure that AF is eligible to hold easements. If your project is the first cross border conservation easement in your province, we will need your help securing whatever approval or designation is required prior to accepting the gift. To date, American Friends has completed such transactions in British Columbia, Ontario, and Nova Scotia.

#### **IRS Status Requirement to Accept Transfer from AF**

To meet tax deductibility requirements in the US, gifts of partial interest in land must be donated to organizations meeting certain criteria. Accordingly, American Friends must ensure that any subsequent easement or covenant holder is qualified. Before a Canadian organization can receive transfers of such interests in land from AF, it must obtain IRS recognition as a "publicly-supported charity." The Canada-US Income Tax Treaty recognizes Canadian charities as equivalent to US 501(c)(3) organizations, but assumes they are a private foundation. You will need to apply to the IRS for this designation and prove that your organization meets the requirements. Go to <https://conservecanada.org> and look in the Resources section for the factsheet on applying for this IRS designation.

Refer to AF's [Land Donation Process Summary](#) for more detail on the costs and timeframes associated with AF's cross-border land and easement donations. We look forward to working with you on your organization's cross-border conservation efforts.

#### **For Additional Information:**

Get in touch with American Friends!

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