

CONSERVATION AGREEMENTS AND TAX BENEFITS

What are Conservation Agreements?

A conservation agreement is an agreement signed between a landowner and a conservation agency or charity, such as the Kawartha Heritage Conservancy. The landowner agrees to place limits on certain land uses to help conserve the property's features. With an agreement, **the landowner still owns the land and can continue to live on and use it**, restrict access to it, and can still sell, give or pass the property on to whomever s/he wishes. An agreement helps control future use and development on the land and enlists a conservation organization to help, even after the property changes hands. It is different than the more familiar right-of-way or access agreements that usually involve a narrow corridor across a property.

Most lands are subject to a number of different protective regulations already. A conservation agreement can simply mirror these regulations in order that they will remain effective and future owners will not violate them in the future. If the owner decides to do so, the agreement can also go further to restrict specified uses, practices or developments that would otherwise damage the natural or cultural features on the property. **They can apply to all or only the significant portion of a property** (e.g. the shoreline). Since these are agreements, they can be tailored to meet the owner's needs, the land's unique natural, cultural or other values, and the goals of the conservation organization signing it. When donated, agreements can also help with tax planning and tax reduction (see details described below).

Once the key aspects of the restrictions are discussed and settled, the agreement is written up in a legal agreement that records the agreed restrictions and ensures that they can be defended. When signed and registered in the land registry office, **an agreement will bind current and future owners to its terms**. Changes can be made to the agreement by mutual consent but would only ever occur if the changes truly achieved the original intent or strengthened the agreement's conservation value and, in many cases, if Environment Canada or the Ministry of Natural Resources also approved of such changes.

By signing an agreement with an owner, the Kawartha Heritage Conservancy takes on the responsibility to **occasionally monitor the property**, usually through an annual, scheduled visit. If a future landowner or someone else violates the terms of the agreement, the Conservancy would approach the person to correct the problem. If this approach is not successful to resolve the concerns, the Conservancy still retains the right, and the responsibility, to restore the land or otherwise defend the terms of the agreement in court.

Tax Benefits of Donating a Conservation Agreement

The principal benefit of a conservation agreement is that it can help the owner design a long-term plan to conserve the important natural or cultural features on the property. However, an agreement can also provide relief from certain income taxes and land taxes, depending upon

the particular circumstances. In summary, the tax benefits of an agreement donation are:

- claim the tax receipt over six years against 100% or even more of a year's income
- capital gains are reduced to one-quarter or zero, thus significantly reducing taxes
- you can choose a different land value for tax purposes (helpful for U.S. residents)
- agreement valuations can be government pre-approved and then guaranteed
- some agreements may reduce property taxes paid on the property
- agreements lower future transfer, probate and goods and services taxes.

To expand on these, when a conservation agreement is donated to a qualified conservation charity like the Conservancy, a tax receipt for its value is issued which can then be used to claim a credit or deduction to reduce income tax. If qualified as an "ecological gift" under federal income tax laws, the value of the agreement can be **claimed over six years up to a limit each year of 100 percent of income plus** the value of any capital gains and any recapture of depreciation (such as on buildings). Generally, in areas of more development pressure, the value of the agreement will be higher. The agreement's value also will be higher if it includes significant restrictions rather than merely matching existing regulations.

These agreements will be valued at the difference between the land's value with, and without, the agreement. In any case, a proper appraisal is required to receive and claim a tax receipt. Where Environment Canada has approved an agreement's valuation, the Canada Revenue Agency would not be able to challenge this value in an audit. This provides **more tax certainty for landowners**. U.S. residents may also be able to claim U.S. tax benefits.

While a tax credit or deduction will be available to a donor, there is also an associated tax liability based upon the capital gains associated with the agreement. This is the case regardless of whether the agreement or land is donated or sold. Fortunately, the amount of the capital gains that is taxed on an *ecological or cultural gift*, including an agreement, is **now zero**. These are tax advantages most other gifts cannot achieve. A landowner also can choose the value of the agreement at lower than market value to help with tax planning. In many cases and with good advice, these and other options can result in significant tax benefits.

A conservation agreement given to the Conservancy may lead to a reduction in property and other taxes. For example, if a conservation agreement's restrictions reduce the land's market value, this will **decrease: any property taxes, future land transfer taxes** upon the property's sale, probate taxes for property transfers through a will, and goods and services taxes, if applicable. Such agreements can thus provide one-time and ongoing tax benefits.

Conservation agreements also have **value for the surrounding area**. Alone, a conservation agreement may reduce a property's market value, but in concert with agreements on nearby properties, over time the value of all the properties may rise because their amenities are protected. An agreement may also redirect or avoid development that would be very costly for a municipality and other agencies to service (with roads, sewers, school buses, etc.). Thus, agreements can help spare ratepayers from large future tax increases. Beyond economic value, protecting natural and cultural features with a conservation agreement also helps maintain our community's character – our special areas, scenic assets, business attractiveness, and overall quality of life.

For more information on conservation agreements and tax benefits, please contact:

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Conserving Today's Heritage for Tomorrow's Legacy