



**American Friends of
Canadian Conservation**



**Alliance of Canadian
Land Trusts**

**Alliance canadienne des
organismes de conservation**



<https://themcguffins.ca/>



**American Friends of
Canadian Conservation**



**Alliance of Canadian
Land Trusts**



**Alliance canadienne des
organismes de conservation**

SECURING IMPORTANT CONSERVATION PROPERTIES OWNED BY U.S. TAXPAYERS

Allen Campbell, Boyne Clarke LLP



Kaz Nesbitt, Grant Thornton LLP

Bonnie Sutherland, Nova Scotia Nature Trust Sandra Tassel, American Friends



**American Friends of
Canadian Conservation**



**Alliance of Canadian
Land Trusts**



**Alliance canadienne des
organismes de conservation**

THIS DOCUMENT IS NOT INTENDED TO
PROVIDE LEGAL, FINANCIAL OR OTHER
ADVICE, OR TO PROVIDE A COMPREHENSIVE
DOCUMENTATION OF ALL ISSUES RELEVANT
TO TAXATION IN CANADA, OR ESTATE
PLANNING FOR OWNERS OF CANADIAN
PROPERTIES.



Basics of tax incentives that encourage US taxpayers to protect land in Canada



Three primary types of donees and the incentives associated with each one



Steps to cross-border conservation success

LEARNING OBJECTIVES



PROBLEM = CONSERVATION OPPORTUNITY

- Significant non-resident ownership of private land in parts of Canada
- Conservation interest high
- Estate planning and tax risks
- Income tax barriers
- Tool needed to protect strategic lands owned by U.S. taxpayers: it now exists!
- Landowners/advisors/land trusts unaware of incentives/opportunities (in Canada & U.S.)
- Important role for your organization

CROSS-BORDER CONSERVATION IN NOVA SCOTIA





MABOU HIGHLANDS, NOVA SCOTIA CASE STUDY

DONEE OPTIONS

GIFT TO CANADIAN CHARITY

- ✓ No capital gains tax
- ✗ No U.S. income tax benefit

GIFT TO A U.S. CHARITY (Not a Prescribed Donee)

- ✗ Canadian capital gains tax
- ✓ U.S. income tax benefit

GIFT TO AMERICAN FRIENDS

- ✓ No capital gains taxes
- ✓ U.S. income tax benefit

CHALLENGES & OPPORTUNITIES

- Significant un-roaded coastal wilderness (>2,000 acres)
- All privately-owned, most by Americans
- Shared conservation vision
- Varied financial capacities
- Varied income tax and estate planning needs
 - *Canadian capital gains tax – barrier to transfer to next generation*
 - *Some seeking U.S. tax benefits*
 - *Concern for land's future—next generation not coming to NS: seeking a land steward*



**MAJOR CROSS-
BORDER
CONSERVATION
SUCCESS**

- Protected 2900 acres with 16 American families (more to come!)
- Mix of conservation tools and options (donation, sale, easements; ecogifts)
- Mix of donees
- Most project and stewardship funds from U.S. taxpayers

American Friends played key role

- *Facilitated and holds conservation easement (U.S. tax incentives)*
- *Empowered significant financial donations*

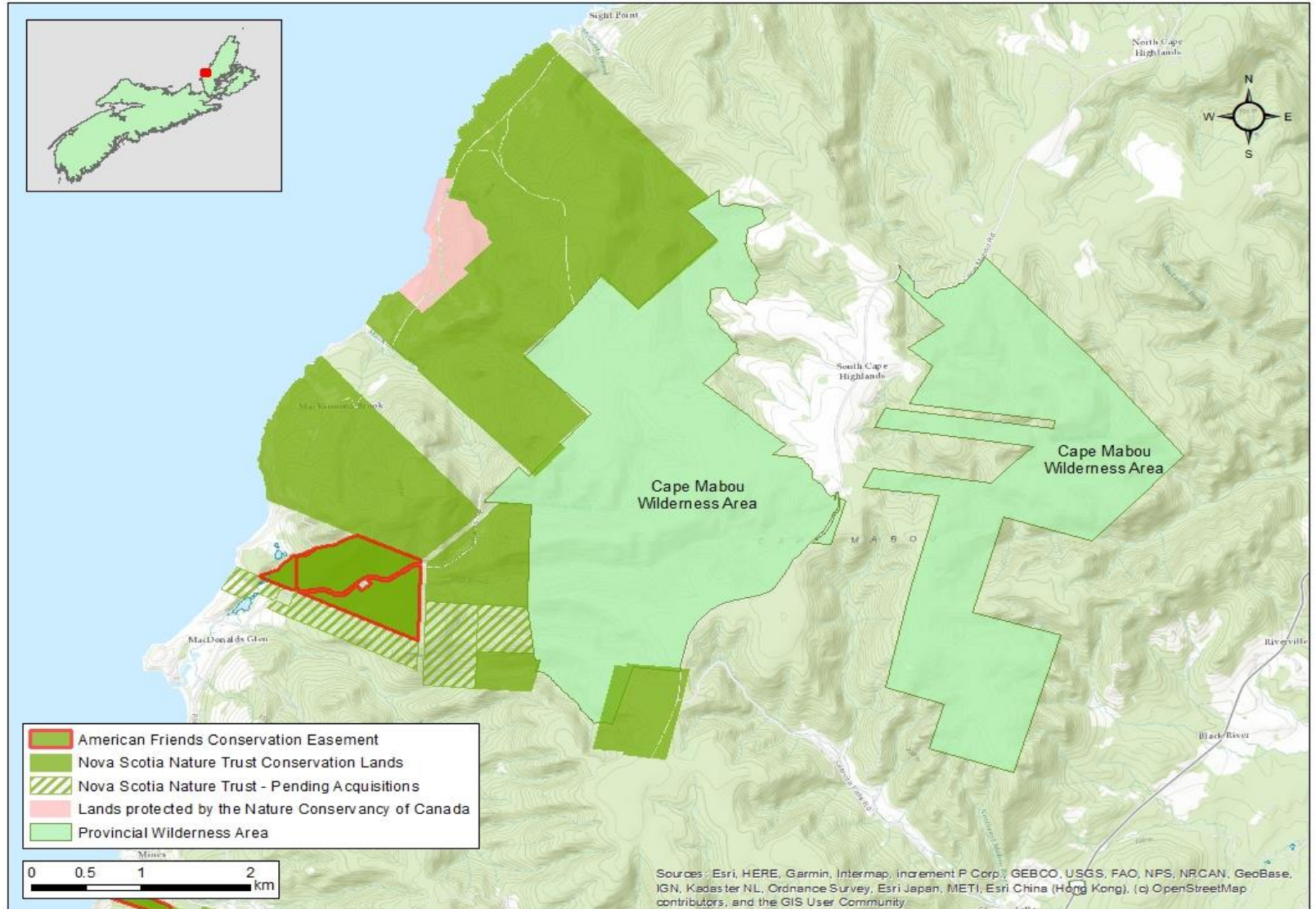
**2900 ACRES
PROTECTED
WITH U.S.
TAXPAYERS**



Mabou highlands Conservation Lands



American Friends of
Canadian Conservation



QUESTIONS?



SAVE SOME GREEN

- Resource for conservation organizations and landowner advisors too
- Created through a partnership with OLTA, funding from Ontario Trillium Foundation
- Grant Thornton provided the cross-border tax expertise
- Aim to update figures and images if new funding is available



U.S. Highlights

- Income, Gift and Estate Taxes (but a BIG exemption)
- Tax deductions allowed on gifts of fee title or conservation interests
- Capital gains tax due only on sales that generate cash proceeds

INTRODUCTION TO U.S. CHARITABLE GIFTS



Qualified Gifts

- U.S. 501(c)(3) charities or Canadian equivalent
- Government agencies
- IRS recognition for Canadian organizations as publicly-supported charity
- Important for conservation easements

U.S. CHARITABLE GIFTS - CONTINUED



**EXAMPLE OF U.S. TAX
BENEFITS
FEE SIMPLE GIFT OF LAND**

Tax basis \$ 280,000

Appraised value of gift
\$1,000,000

US Charitable deduction
\$1,000,000

Top marginal tax rate 37%

Potential US tax benefit \$ 370,000

State tax deductions also possible

*No gift tax consequence, 5 year deduction
carry forward*



EXAMPLE OF U.S. TAX BENEFITS GIFT OF CONSERVATION EASEMENT

Value before easement	\$ 1,000,000
Value after easement	\$ 600,000
Charitable deduction	\$ 400,000
Top marginal tax rate	37%
Potential US federal tax benefit	\$ 148,000

Reduces property value for US federal estate tax purposes

No gift tax consequences, 15-year deduction carry forward



QUESTIONS?





CANADIAN TAX PRIMER FOR U.S.
TAXPAYERS...

**AND LAND TRUSTS WHO WANT TO
WORK WITH THEM**

U.S. Landowners need to know :

Dispositions of Canadian real estate can result in a capital gains tax liability – even gifts and bequests

You can't just “give it to the kids,” unless you have funds to pay the tax

The tax on gifts to Canadian charities is normally offset by the tax receipt

A gift to a U.S. charity would be taxable in Canada, unless recipient is a Prescribed Donee

“IF YOU OWN LAND IN CANADA, YOU ARE GOING TO BE A CANADIAN TAXPAYER”

CANADIAN TAX FOR U.S. TAXPAYERS

CDN TAX DEDUCTIONS FOR LAND OR EASEMENT GIFTS

- A Cdn tax receipt useful to U.S. residents, **only** if the donor has Canadian income
- May be useful for reducing or eliminating Cdn capital gains tax on other income, transactions or transfers
- Potential Cdn tax credits (EGP)
- Conservation can be an essential estate planning tool
- Possible to reduce or eliminate Cdn capital gains tax on the conservation gift





**A GIFT TO A CANADIAN QUALIFIED
DONEE MAY MAKE SENSE WHEN...**

Donor has Canadian-source income and can use a Cdn tax receipt, or

Has limited U.S. income to utilize a U.S. tax benefit

Parties cannot, or don't want to, pay additional costs of a transaction that will be deductible in the U.S.

Likely appraised value of the gift is < \$200,000

In the case of a conservation easement, the Canadian entity is or will be recognized by the IRS

CANADIAN PRESCRIBED DONEE

- Category in Canadian Income Tax Act
- Incentive for U.S. taxpayers to protect ecologically significant property in Canada
- Capital gains tax liability on gift is reduced or eliminated
- Donor designates the proceeds to be equal to adjusted cost base = zero Cdn capital gain
- Net effect like gift to CDN charity, plus U.S. tax benefits
- American Friends of Canadian Conservation is the only Prescribed Donee created to support other Canadian entities



AMERICAN FRIENDS OF CANADIAN CONSERVATION

Canada's Cross-border Conservation specialist

*Protecting Canada's natural heritage through partnerships with
Canadian conservation organizations and preservation-oriented
U.S taxpayers*

- US 501(c)(3) publicly-supported charity
- Non-Profit Corporation from Washington State, U.S.
- Canadian Prescribed Donee
- Not an EcoGift organization
- All projects involve a qualified Canadian partner
- Under US law cannot operate as a “pass-through”



GIFTS OF LAND AND COVENANTS TO AMERICAN FRIENDS

- Conservation priority for Canadian partner
- Partner stewards the property or easement
- Donation to American Friends is tax deductible in the US
- Transaction meets both US and Canadian requirements
- Fee title or conservation interest can be transferred to partner in separate transaction



A GIFT TO AMERICAN FRIENDS MAKES SENSE WHEN...



Donor needs or wants a U.S. income tax deduction

Donor has no Canadian-source income

Donor is not disposing of other Canadian property that would produce a capital gain

Property is a priority for your organization

Property/gift value > \$200K

There is a source of funds to cover costs



A GIFT TO AN ELIGIBLE EGP RECIPIENT MAY MAKE SENSE WHEN...

- The property meets EGP ecological criteria, and
- An eligible Ecological Gift Program recipient is interested in the property, and Donor:
- Has Canadian-source income and can use a Cdn tax receipt, and/or
- Has other taxable Canadian property to transfer which will create a capital gains tax liability.
- In the case of a conservation easement, the EGP recipient is or will be recognized by the IRS.

SUMMARY OF DONEE OPTIONS FOR U.S. TAXPAYERS PROTECTING LAND IN CANADA

GIFT TO CANADIAN CHARITY OR OTHER QUALIFIED DONEE

- Relief from Canadian capital gains taxes (on the gift)
- No U.S. income tax benefit, unless Canadian-source income

GIFT TO A U.S. CHARITY (That is not a Prescribed Donee)

- Canadian capital gains would be due on appreciation
- U.S. income tax benefit

GIFT TO A PRESCRIBED DONEE

- Relief from Canadian capital gains taxes
- U.S. income tax benefit
- e.g. American Friends of Canadian Conservation
- *BEST TAX OUTCOME*



QUESTIONS?

CROSS-BORDER TRANSACTIONS ARE SIMILAR

Transactions involving US taxpayers are fundamentally the same as those with Canadian landowners:

Determine level of priority for conservation

Relationships with landowners, understanding their goals and needs, then addressing them

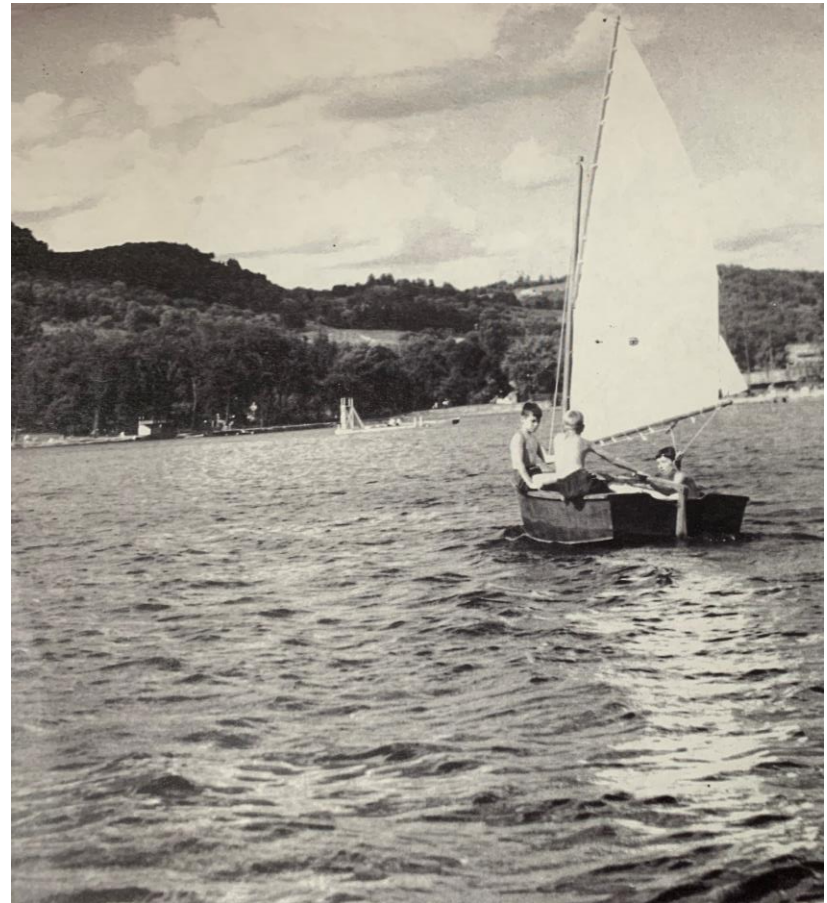
Comparable potential transaction structure options, including EcoGifts

Same due diligence (appraisal, title, environmental hazards, stewardship)

Same Canadian tax considerations (more or less)



**American Friends of
Canadian Conservation**



CROSS-BORDER TRANSACTIONS ARE DIFFERENT



There are differences you need to be aware of:

Canada Revenue Agency has different rules for non-resident vendors/donors

Easement recipients should be recognized by the Internal Revenue Service as qualified donees

EcoGift is valuable only if the landowners have other Canadian taxable property

There are U.S. tax incentives available through partnership with American Friends of Canadian Conservation

We can help!

<https://conservecanada.org/resources/>



**American Friends of
Canadian Conservation**

AMERICAN FRIENDS' CROSS-BORDER CHECKLIST



**American Friends of
Canadian Conservation**

- Compares steps and requirements for three primary types of cross-border conservation transactions
 - Gift to Canadian donee that does not go through the EcoGift Program
 - An EcoGift (only to a qualified Canadian recipient)
 - Donation to a US charity that is a Canadian Prescribed Donee (e.g. American Friends of Canadian Conservation)
- Contact American Friends for a digital version of the Checklist

QUESTIONS?

- Download *Save Some Green*

<https://conservecanada.org>

- Contact Sandra Tassel

sandra.tassel@conservecanada.org

360-515-7171



MORE CONTACT INFORMATION

- Kaz Nesbitt, Grant Thornton LLP,
kaz.nesbitt@ca.gt.com
- Allen Campbell, Boyne Clarke
LLP acampbell@boyneclarke.ca
- Bonnie Sutherland, Nova Scotia
Nature Trust bonnie@nsnt.ca

