Canadian Institute of Resources Law
Institut canadien du droit des ressources

Legal and Economic Tools and Other Incentives to Achieve Wildlife Goals

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Foreword

This publication is the fifth in a series of papers on Canadian Wildlife Law being published by the Canadian Institute of Resources Law. The research and writing of these papers has been made possible as the result of a generous grant by the Alberta Law Foundation, and the Institute thanks the Foundation for its support of this work. The Foundation of course bears no responsibility for the content of the papers and the opinions of the various authors. The Canadian Wildlife Law Project was originally developed and proceeded under the direction of John Donihee, then a Research Associate with the Institute. Following Mr. Donihee's return to private practice, the supervision and general editorship of the project has been assumed by Institute Research Associate Monique Passelac-Ross. I would like to thank both these individuals and all those who have contributed to the success of the project for their efforts towards developing a greater awareness of this important area of natural resources law.

Wildlife and a concern for wildlife are fundamental aspects of the Canadian heritage, and the fur trade and the harvest of wild game were essential parts of Canadian history. The need to provide a land base and the habitat to sustain wildlife populations is a recurring theme in both national and provincial natural resources policy; in particular, there has been a growing recognition of the need to preserve habitat for endangered species. Similarly, wildlife and access to wildlife have a particular importance for aboriginal peoples, and the rights to wildlife have been central among the concerns of First Nations in Canada. Finally, internationally, Canada is party to numerous conventions whose goals are the protection and sound management of wildlife – perhaps most notably in recent years, the Convention on International Trade in Endangered Species and the Biodiversity Convention.

Despite the obvious importance of wildlife to Canadians in all these contexts, surprisingly little has been written about wildlife law, and certainly no comprehensive overview of such law exists in Canada. The purpose of this series of papers is to begin to remedy this shortfall in Canadian legal literature.

J. Owen Saunders
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Canadian Institute of Resources Law

Calgary, Alberta
November 2006

Preface

Wildlife management and control laws, such as wildlife statutes or species at risk legislation, go part of the way towards protecting wildlife and habitat. However in our complex society such legislation does not fully accomplish the job. Wildlife management and control statutes largely are re-active. They punish those who take wildlife or destroy habitat in violation of legislative provisions. They require steps to protect wildlife or habitat when a species already is in trouble. Although some contain provisions that enable the government to establish wildlife reserves, they normally do not give private citizens, industry, or non-governmental organizations rights or incentives to pro-actively protect species or preserve or enhance habitat. Fortunately, legislation and programs other than those relating directly to wildlife management and control do.

This paper describes and where appropriate, evaluates legal and economic tools to achieve protection of wildlife and wildlife habitat. It looks at novel private conservancy legal tools such as conservation easements, and transfer of development rights, as well traditional tools that may be used to achieve conservancy goals such as contracts, leases, licences, *profits à prendre*, restrictive covenants and common law easements. It also considers economic based tools such as income and property tax incentives, certification programs, and payment for supplying ecological goods and services related to wildlife and habitat protection.

Many people contributed to this paper. Sue Parsons of CIRL assisted with putting it into final form. Diane Volk (2001) and Christine Plante (2004), former researchers with CIRL, provided valuable background information. John Donihee, formerly with CIRL, must be recognized for spearheading the wildlife project, Mike Wenig of CIRL thanked for bringing it along, and Monique Passelac-Ross of CIRL congratulated for bringing it to fruition. My sincere gratitude to all.

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November 2006

1. Introduction

This paper deals with legal and economic tools to achieve protection of wildlife and wildlife habitat. The legal tools that the paper focuses on are those that enable landowners to protect habitat and wildlife on a temporary or permanent basis. The economic tools that the paper focuses on are those that give landowners, developers, and industry incentive to protect wildlife and habitat directly, or to carry on activities in a manner that protects wildlife and habitat.

2. Legal Tools for Advancing Wildlife Goals

2.1. Introduction

There are two sources of legal tools relevant to the protection of wildlife and habitat. The first derives from common law. These tools consist of the numerous mechanisms that can be used to secure habitat interests or obligations to protect wildlife or habitat. The second are legislative. These tools impose regulatory duties or provide financial incentives that further wildlife protection objectives. The following sections describe the tools from each source and give examples of how they can be used to encourage and secure wildlife friendly practices.

2.2. Common Law Legal Tools

There are numerous tools rooted in common law which may be used by private landowners and, if authorised by legislation, any level of government. This part first describes the nature of the tool and then describes how it might be used to facilitate wildlife and wildlife habitat protection activities.[1]

2.2.1. Contracts

2.2.1.1. Nature of Tool

At common law a contract is a binding agreement between two (or more) parties which creates reciprocal rights and obligations. A valid contract requires that: (1) the parties be "competent" (i.e., neither minors, under duress nor mentally unqualified); (2) "consideration" passes between the parties (i.e., either money, exchange of promises, or other valuable consideration); (3) there is a mutual understanding of what is agreed upon;

[1]This part incorporates a revised version of a portion of A. Kwasniak, *Reconciling Ecosystem and Political Borders: A Legal Map* (Edmonton: Environmental Law Centre, 1997) 97-102.

and (4) the subject matter of the contract is legal (cannot contract to violate the law). A contract may either be in writing or oral. Contracts bind only the parties to the agreement and no one else. As well, contracts normally do not create an interest in land. Accordingly, a contract is a personal agreement only. It does not run with the land and is not binding against future owners.

2.2.1.2. Use of Tool

There are many uses for contracts to assist in wildlife and habitat protection activities. For example, a conservation organization or a government agency might negotiate a contract with a landowner to fence off riparian areas from livestock or to plant winter cover to improve habitat.

2.2.2. Easements

2.2.2.1. Nature of Tool

An easement is a property interest that a landowner may grant to some other person or organization. An easement generally gives the easement holder, the owner of one parcel of land (the grantee), a right to use the land of another (the grantor) for a specific purpose. Easements run with the land and bind subsequent owners in perpetuity. The common law requirements for an easement may be summarised as follows:

- There must be a *dominant tenement* and a *servient tenement*. The dominant tenement is the parcel of land that benefits from the easement. The servient tenement is the parcel of land that is subject to the easement and benefits the dominant tenement.

- The easement must benefit the dominant tenement in the sense of making it a better or more convenient property.

- The dominant and servient tenements must be separate parcels of land not owned and occupied by the same person.

- Although negative easements may be possible,[2] easements usually are positive in character in that they permit the owner of the dominant tenement to utilize the

[2]At common law there are a few categories of negative easements, whereby the owner of the servient tenement could be restricted from doing certain things with his property to benefit the dominant tenement. These negative easements restricted development on the servient tenement to enable light, air, support, or flow of water to benefit the dominant tenement. See S.G. Maurice, *Gale on Easements*, 15th ed. (London: Sweet & Maxwell, 1986) at 38. It is moot whether new categories of negative easements are legally

servient tenement for a purpose. For example, an easement might give the owner of the dominant tenement a right-of-way to pass over or put something on the servient tenement, or the right to discharge water onto the servient tenement.

2.2.2.2. Use of Tool

Easements could have a number of uses to help achieve wildlife and habitat protection objectives. For example, a conservation organization or government agency might negotiate an easement for access to a parcel of land to restore a wetland and to monitor waterfowl nesting.

2.2.3. Leases Conferring a Land Tenancy

2.2.3.1. Nature of Tool

At common law, a lease that confers a land tenancy is an agreement under which a person who owns land, the lessor (or landlord), agrees to lease (rent) land to some other person called the lessee (or tenant) for a period of time. A properly drawn lease constitutes an interest in land and runs with title for the term of the lease.

2.2.3.2. Use of Tool

Leases may prove to be a valuable tool if a landowner wishes to entrust wildlife or habitat protection activities relating to a parcel of land to an organization or government agency but does not wish to permanently part with the parcel. For example, an owner might lease a quarter section out of a larger parcel to an organization to maintain and restore wildlife habitat.

2.2.4. Licenses

2.2.4.1. Nature of Tool

A license is a contract that gives a right to a person to enter onto the property of another person to do something. A license may either be in writing or simply be a verbal agreement. A license does not normally create an interest in land. Accordingly, a license is a personal agreement only. It does not run with the land and is not binding against future owners.

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permissible. See A.J. McLean, "The Nature of an Easement" (1966) 5 West. L. Rev. 32. More than likely, any potential new class of negative easements would fall under restrictive covenants.

2.2.4.2. Use of Tool

Licenses have any number of uses to promote wildlife and habitat protection activities. For example, a conservation organization could enter into a license agreement with a landowner to enter onto the owner's property to enhance and monitor nesting sites. The license could be for a set term. However, if the owner sells the property prior to the expiry of the term and the new owner does not adopt the license agreement, the new owner will not be bound by the agreement and may bar the conservation organization from the property.

2.2.5. Profit à Prendre

2.2.5.1. Nature of Tool

A *profit à prendre* is a common law tool consisting of the right to enter on the land of another person and to take some "profit" of the soil. The profit must be capable of being owned, such as minerals, oil, stones, trees, grass, etc. for the use of the owner of the right.

Common law has recognized a variety of *profits à prendre* and there is no reason to think that the class of *profits à prendre* is closed. *Profits à prendre* may exist *in gross*. This means there is no need for a dominant and a servient tenement. A property owner may, for example, convey to another person the exclusive right to come on to his or her land and remove a profit such as timber without that other person owning any land to serve as a dominant tenement. As well, since the right may exist in gross, the person holding a *profit à prendre* may assign the right to someone else. A *profit à prendre* may be granted for a period of time or may be granted in perpetuity – forever.

Profits à prendre, like easements, are common law property interests. As property interests at common law *profits à prendre* run with the land and are enforceable against future owners. In some provinces land registration statutes require that property interests must be registered against title in order to bind successors in title.

2.2.5.2. Use of Tool

A *profit à prendre* could be useful to aid in wildlife and habitat protection activities. For example, a landowner could grant a conservation organization a *profit à prendre* consisting of the exclusive right to cut and remove timber from an area of land. As long as the organization holds the exclusive right, no one else may cut or remove timber. Thus, in a backward way, the right to cut and remove timber preserves and maintains natural forest habitat values. Of course the landowner must appreciate that the conservation organization that holds the exclusive right via the *profit à prendre*, may cut and remove timber if it wishes to.

2.2.6. Restrictive Covenants

2.2.6.1. Nature of Tool

Restrictive covenants, like easements and *profits à prendre*, are common law property interests. To constitute a valid common law restrictive covenant, the owner of one parcel of land, the dominant tenement, places restrictions on the uses of another parcel, the servient tenement. To be valid, the restrictions on the servient tenement must in some demonstrable way benefit the use and enjoyment of the dominant tenement. A restrictive covenant may only contain *restrictions* on use; any positive rights of the owner of the dominant tenement relating to the servient tenement may be unenforceable and could invalidate the entire restrictive covenant. Changes of use or circumstances also may invalidate a restrictive covenant. The common law rules require that the dominant and servient tenements be owned and occupied by separate persons.

2.2.6.2. Use of Tool

Although of fairly limited application because of the strict and cumbersome common law rules, in the appropriate circumstances restrictive covenants could prove quite powerful in securing wildlife and habitat protection. For example, adjoining landowners might wish to enter criss-cross restrictive covenants to protect shared wildlife habitat. They may also mutually agree not to hunt on their land or allow others to do so.

2.3. Statutory Legal Tools

2.3.1. Conservation Easements

The single most important statutory legal tool to aid and secure wildlife and wildlife habitat friendly practices is the conservation easement. Conservation easements are statutorily created property interests by which a landowner grants to another person rights with respect to that landowner's land and the landowner takes on certain obligations in respect of the land. The rights and obligations relate to the conservation of the land in accordance with the agreement as authorized by statute. When registered the interest runs with title and accordingly is enforceable against subsequent owners.

All jurisdictions, except Newfoundland and Labrador, the Northwest Territories and Nunavut, have passed some form of conservation easement legislation.[3] In the pieces of

[3]Proceeding from the west, 1996 amendments to the British Columbia *Land Title Act* authorize covenants for conservation purposes; *Land Title Act*, R.S.B.C. 1996, c. 250, s. 219(3). 1996 amendments to the Alberta *Environmental Protection and Enhancement Act* authorize conservation easements; *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, ss. 22-24. The 1996 *Conservation*

legislation, the statutory interests enabled come under various names including conservation "easements", "covenants", "servitudes", or "agreements." For convenience, this paper refers to such interests as "conservation easements."[4] No matter the jurisdiction, conservation easement legislation contains provisions:

- that enable a landowner (the "grantor") to grant an interest in all or part of their property to a specified qualified holder (the "grantee") for purposes set out in the legislation;
- that set forth who may be granted a conservation easement – depending on legislation this may be a provincial minister or agency, a municipality, or non-governmental organizations meeting specified criteria;
- that establish purposes for which a conservation easement may be granted;
- that regard the possible terms for a conservation easement – normally conservation easements may be granted for a limited term or in perpetuity;
- that remove all or many of the common law barriers associated with restrictive covenants and easements;[5]
- that make the interest run with the land so that it binds future owners; and

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Easements Act enables conservation easements in Saskatchewan, *Conservation Easements Act*, R.S.S. 1996, c. C-27.01. Manitoba authorizes conservation agreements in the *Conservation Agreements Act*, C.C.S.M., c. C173. Ontario's *Conservation Land Act*, R.S.O. 1990, c. C.28, enables conservation covenants. The Quebec *Natural Heritage Conservation Act*, L.R.Q., c. 61.01m which replaced *An Act Respecting Nature Reserves on Private Land*, L.R.Q., c. R-26.2, authorizes conservation servitudes. New Brunswick's *Conservation Easements Act*, R.S.N.B. 1998, c. C-16.3, allows the creation of conservation easements. Nova Scotia's *Conservation Easements Act*, S.N.S. 2001, c. 28, which replaced the *Conservation Easements Act*, S.N.S. 1992, c. 2, authorizes conservation easements. Prince Edward Island's *Natural Areas Protection Act*, R.S.P.E.I. 1988, c. N-2 authorizes restrictive covenants to protect natural values. The covenants are tantamount to conservation easements in that the legislation states that such "restrictive covenants" may be positive or negative, and do not require a dominant tenement (s. 5). Sections 76 to 80 of the *Environment Act*, S.Y. 1991, c. 5, authorize the granting of conservation easements in the Yukon Territory.

[4]For general information on conservation easement-type interests in Canada see J. Atkins, A. Hillyer & A.J. Kwasniak, *Conservation Easements, Covenant and Servitude in Canada, A Legal Review* (Ottawa: Environment Canada and Canadian Wildlife Service, 2004). The text provides an overview of conservation easement legislation throughout Canada, and includes information on related topics, including drafting conservation easements, drafting conservation easement legislation, income and property tax implications, the U.S. experience, and case law on conservation easements.

[5]See discussion under easements and restrictive covenants.

- that concern amendment and termination.

Conservation easements can be very useful tools in protecting wildlife and habitat. A conservation easement with this objective might prohibit subdivision (since it causes fragmentation), hunting, and activities that impair or destroy habitat such as use of harmful pesticides, timber harvesting and intensive agricultural activities. It might also require that any permitted land related activities be carried out in accordance with a land management plan designed to protect wildlife values.

Conservation easements are attractive to entities that secure conservation interests in that they do not require a purchase of an entire parcel of land. Purchasing the rights to develop land in almost every case will be less than having to purchase the entire fee. As well, with conservation easements a grantee normally can encumber a part of a titled parcel of land without the need for subdivision. This further reduces costs. Conservation easements are also attractive to landowners since they can be assured that important environmental values of their property are protected without having to sell or donate the entire interest to a conservation minded entity. With conservation easements title stays in the name of the grantor.

Conservation easements are enforceable in accordance with the terms of the conservation easement agreement as well as enforcement provisions set out in authorizing legislation. Common enforcement methods include the right to sue for infractions and to apply for an injunction to prevent or stop violations. Agreements also may allow for out of court dispute resolution methods such as mediation or arbitration.

There could be tax benefits for landowners who donate conservation easements. Section 3 of this paper on economic tools discusses potential tax benefits.

2.3.2. Transfer of Development Credits

Municipalities throughout Canada struggle with reconciling municipal urban or rural landscape protection policies, including wildlife and habitat protection, with development pressures.[6] Often municipal protection policies are forsaken to permit zoning changes and consequent subdivision and development inconsistent with them. Even though municipal councils may have the legal right to turn down land development applications that would violate municipal landscape protection policies, councils often grant such applications for a variety of reasons. These could include considerable pressure by developers, claims for compensation if applications are turned down,[7] desire for increased tax base, and a desire

[6]For a discussion of legal and policy aspects of transfer of development credits see A. Kwasniak, "The Potential for Municipal Transfer of Development Credit Programs in Canada" (2004) 15 J.E.L.P. 49.

[7]In Canada only rarely could a council's denial of a zoning change, subdivision or development

to avoid denying developers some economic return for their land. However there is a legal tool that potentially municipalities could use that would enable them to honour their wildlife protection policies while still enabling landowners and developers some economic return for their land and allowing for increased tax base. This tool is a municipal transfer of development credits (TDC) program, sometimes called a transfer of development rights (TDR) program.

TDC programs provide a method of preserving rural landscape or urban areas by permitting the transfer of development potential from one area and conferring it on another. The owner of the restricted parcel receives development potential credit, which may be sold and used by a purchaser to increase development potential on another parcel, more suitable for development, all in accordance with the TDC program. Unlike traditional zoning, TDC programs are designed to enable compensation for a landowner for the loss of development potential to carry out municipal preservation policies. The concept has been hailed as an "innovative way to accommodate both preservation interests and development interests".[8]

In a rural setting the objectives of TDC programs typically are to preserve landscape features such as agriculture, open space, wildlife habitat, or important ecological features as well as to prevent fragmentation. In an urban setting the objectives typically are to maintain heritage or green areas, wildlife corridors, or to preserve preferences for low density. In both rural and urban settings overall objectives are to promote and realize orderly development. A TDC program meets objectives by shifting permissible densities from areas where development is less desirable to areas where it is more desirable. A TDC program can enhance equity to landowners restricted by zoning or other land related regulations by giving them opportunity to earn economic return from their land. A municipal TDC program does this by enabling a landowner to sell units of development potential inherent in parcels of land in accordance with a municipal TDC program.

A typical TDC program involves transferring development potential from one parcel of land to another parcel of land in accordance with municipal plans, policies and bylaws. "Development potential" means the difference between existing land use and potential land use as allowed by and set out in applicable local land use bylaws and municipal plans. The parcel from which development potential is transferred is the "sending parcel". The parcel that receives the development potential is the "receiving parcel". For example if a land use bylaw allows one single family residence per titled parcel in a given land use

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application legally give rise to a right to compensation. Nevertheless, such claims are made and councillors are influenced by them either because councillors are not fully aware of the municipality's legal rights or, for political or other reasons, they are they not willing to fully assert the municipality's legal rights.

[8]Michigan Farmland and Community Alliance, "Transfer of Development Rights", <http://www.michiganfarmbureau.com/>.

zone, a TDC program could give a landowner who holds four undeveloped titled parcels in the zone four development credits. The landowner may transfer the credits for value. Appropriate legal instruments secure restrictions on development in the sending parcel, such as conservation easements or restrictive covenants. In the United States, where TDC programs are common, the transfer normally is done in one of two ways. The first is on a market model. Here the holder of credits sells them to a willing purchaser at whatever price the market will bear. The municipality is not involved in the transaction. The second is a more regulated model. Here the holder of credits transfers them to a broker who arranges for ultimate sale. The broker could be the municipality or some other entity approved by the municipality. On either model, the purchaser can use the credits in a receiving zone, identified in municipal plans and bylaws, subject to any required change of zoning, and subdivision and development processes. On either model, appropriate legal instruments secure development restrictions on sending parcels.

TDC programs offer considerable potential to assist in habitat protection especially in urban fringe areas. TDC programs are enabled by statute in that municipalities must have at least implied legislative authority to create such programs. Implied authority would arise from provincial legislation that creates municipalities and gives them powers in relation to planning and development that authorizes the elements a TDC program without expressly authorizing such programs themselves. Whether a particular municipality in a given province possesses implied authority to adopt a program, or whether the municipality requires explicit authorizing legislation are questions that must be addressed prior to the municipality going down the TDC road. Elsewhere the author sets out how a municipality might proceed in determining whether it at law possesses the right to establish a TDC program without there being explicit provincial legislation authorizing TDC programs.[9]

3. Economic Based Tools for Encouraging Wildlife and Wildlife Habitat Protection

3.1. Introduction

Although we might hope that businesses and individuals naturally would carry out their day to day and long term plans in a manner that protects and enhances wildlife, such hope is, unfortunately at this time, unrealistic. Perhaps some day society's multitudinous and multifaceted activities all will reflect an environmental ethic that spontaneously will drive choices that acknowledge that humans share the world with non-humans and that show respect for wildlife habits and habitat. We are not there yet, not by a long shot, but we have made impressive progress in that direction.

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[9] *Supra* note 6.

Until we reach this caring and humble state, we as a society need incentive to make wildlife friendly choices. A powerful source of incentive is laws that command wildlife protection actions. Besides the fact that governments, on the whole, are not fully engaged to seize such legislative opportunities, there are weaknesses with this source. One frequently mentioned criticism of "command and control" approaches is that they can impede the desired change of attitude because no one likes to be told what to do. One might counter with examples of command and control approaches that did, to a significant extent, lead to change of attitudes such as anti-slavery laws, child labour laws, and animal cruelty laws. Indeed, the societal changes engendered, at least in part, on account of these laws, are so embedded that it seems somewhat repulsive to imagine economic incentives to release ones' slaves, or to desist from employing 12 year olds to perform hard labour for trivial compensation, or from beating ones' dog.

Nevertheless, economic incentives can aid in attitude changes. Everyone, after all, likes to be rewarded for good behaviour. Economic incentives supply the reward in a manner that mere compliance with legal requirements does not. But, the point to be underlined is that behaviour must be recognized as 'good' independent of the economic reward. A child can be paid to go to the store and the payment is an economic incentive. But paying the child does not help instil any moral 'going to the store' attitude in the child, nor should it. However, rewarding a child for being kind to her classmates by giving her a prize, may help promote the desired attitude because being kind to ones classmates is good, independent of the prize. Accordingly, economic incentives alone will not lead to the required changes in society that will in the end better ensure protection of wildlife and habitat. They have a place, to be sure, especially when directed at corporations that by essence mainly have economic goals. But they are only part of the picture. Other parts include legal requirements, education initiatives and stewardship practices without compensation. This section of the paper describes a number of economic tools that comprise that part. Other papers in this series describe aspects of other approaches.

3.2. Federal Income Tax Incentives in Regards to Conservation Easements[10]

3.2.1. Taxation Credits for Gifts of Conservation Easements

The federal *Income Tax Act*[11] offers incentive for landowners to grant and donate conservation easements or larger interests in land to registered charities or to a level of government – municipal, provincial, or federal. Owners of land who make such grant and donation are entitled to a tax credit in the case of individuals and to a deduction from income in the amount of the value of the gift as shown on the charitable or government donation receipt in the case of corporations. Under the *Income Tax Act*, tax credits are calculated as 16 percent of the first $200 of the amount shown on the donation receipt and 29 percent of the balance. The tax credit is a federal tax credit and reduces the amount of federal tax payable. Most provinces provide a similar provincial tax credit for charitable gifts but potential donors should check this out with their tax advisors.

If a donor cannot use the entire donation receipt in the year of the gift, the donor may carry forward any unused balance up to five years to claim a tax credit or deduction. This does not apply to the year of death but any unused credits may be carried back one year. In the end, any unused credits are forfeited.

3.2.2. Capital Gains and Offsets

Interests in land may be held as capital property or as inventory. The Canadian Revenue Agency (CRA) likely would find that land is held as inventory if the holder is in the business of dealing with interests in land (a land broker or a person in the development business) or where land was acquired with the primary or secondary intention of selling it at a profit. Selling land to anyone or donating land to a level of government or to a charity both have income tax consequences. A sale or donation of land held as capital will give rise to taxable capital gains that must be added to income where the proceeds or

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[10]This section sets out a very brief discussion of some of the tax considerations of sales or gifts of land and conservation easements. For more information about the tax implications of dispositions of real property see Ann Hillyer & Judy Atkins, *Giving It Away: Tax Implications of Gifts to Protect Private Land* (Vancouver: West Coast Environmental Law Research Foundation, 2004); and Judy Atkins & Ann Hillyer, "Land Conservation Transactions: Tax Implications of Gifts of Land and Interests in Land" (Paper prepared for the Conference on The Leading Edge Stewardship and Conservation in Canada 2003, University of Victoria, B.C., 3-6 July 2003). Also see Interpretation Bulletin IT-110R3, Part I, s. 3. This is Canada Revenue Agency's administrative position based on the common law interpretation of "gift". Sections 110.1 and 118.1 of the *Income Tax Act* (R.S.C. 1985, c. I-25) deal with gifts. See the new policy relating to split-receipting discussed below.

[11]*Ibid.*

deemed proceeds, in the case of a donation, exceed the acquisition value or the fair market value of the property at December 22, 1971, (when capital gains tax came into effect) which ever is later. Unless the gift constitutes an ecological gift, discussed below, the amount that must be taken into income is 50 percent of the capital gain. A sale or donation of land held as inventory will require the entire proceeds being taken into income. Conservation easements are interests in land and the granting of a conservation easement is subject to these tax rules. Normally the granting of a conservation easement will be a deemed disposition of capital property though it is conceivable that it could be a disposition of inventory.

In addition to the charitable receipt that may be used against income, the *Income Tax Act* gives donors a tax credit that may be used to offset any capital gain. Unless the gift qualifies as an ecological gift, discussed below, the amount of the tax credit is a percentage of the value of the donation up to a maximum of 75 percent of the taxpayer's income for the year, plus 25 percent of the taxable capital gain, plus 25 percent of recaptured capital cost allowance.[12]

3.2.3. Ecological Gifts

Where land or an interest in land, such as a conservation easement, constitutes an *ecological gift,* the federal tax rules offer greater incentive than with ordinary gifts of capital property. An ecological gift is a gift of land or an interest in land that the federal Minister of Environment certifies as ecologically sensitive. Like other charitable gifts, an ecological gift gives rise to a tax credit or deduction for donors. However, donors of ecological gifts enjoy additional benefits. One is a reduction of the percentage that must be added into income as a taxable capital gain. For donors of ecological gifts of land or interests in land, the taxable portion of the gain is 25 percent instead of 50 percent as is the case with regular gifts of capital property. The other benefit concerns the amount of the gift that may be deducted against income in a year. For ordinary gifts the amount deducted cannot exceed 75 percent of income. For ecological gifts a deduction may completely wipe out income.

[12]*Income Tax Act*, s. 118.1(1), definition of "total gifts". Capital cost allowance is given in respect of property in respect of which a donor claimed depreciation. In addition, the *Income Tax Act* allows a donor to elect any amount between adjusted cost base (acquisition price or value on December 22, 1971 which ever is later, less a number of allowed adjustments) and the fair market value to be the value of the gift. Where a taxpayer elects an amount equal to the adjusted cost base there will be no gain. However, the amount of the gift subject to a tax credit or deduction also will be deemed to be this amount (*Income Tax Act*, ss. 118.1(6) and 110.1(3)).

3.2.4. Split Receipting

Recent income tax policy changes have resulted in even greater incentives for landowners to donate land or interests in land. In 2003 and 2004, the Department of Finance released proposed amendments to the Income Tax Act that would enable split-receipting.[13] The proposed amendments, which are being applied even though they are not formally passed, apply to transactions where part of a disposition is a gift of capital property and part is a sale or otherwise a transfer or grant for consideration. The proposed amendments are retroactive to December 20, 2002.

Prior to December 20, 2002, if a landowner received any money or other consideration for a transfer of land or granting of a conservation easement, CRA would not consider any part of the transaction to be a gift. The thinking behind this was that the notion of a 'gift' is incompatible with the donor receiving anything in return. The changes recognize the fact that a person might indeed transfer something for less than its value and fully intend that the part for which no consideration was received was a gift. Indeed, to qualify for split receipting the donor must be able to demonstrate a clear intent to give a gift for that portion of the transaction that constitutes a gift. If the value of the consideration or other advantage or benefit to the donor does not exceed 80 percent of the market value of the gift, CRA normally will recognize the balance as eligible for a tax credit or deduction. Where percentage exceeds 80 percent, the balance still could qualify for a tax credit or deduction but the donor must be able to establish to CRA's satisfaction that the balance was intended to be a gift.

3.3. Transfer of Development Credits

Earlier this paper discussed transfer of development credits programs. These programs are economic tools since they enable landowners to receive money to retain natural or other desired values of their property and give incentive to developers to develop land in areas that are appropriate for development.

3.4. Property Tax

3.4.1. Introduction

Municipal property tax benefits are mentioned not so much because they exist to any remarkable extent in Canada as an incentive for protecting wildlife and habitat but rather because municipal taxation laws could be changed to provide incentive for land owners

[13]See CRA material online: <http://www.cws-scf.ec.gc.ca/ecogifts/split_e.cfm>.

to leave their land open for wildlife purposes.[14] As the discussion demonstrates, under current law, landowners taking this course might end up with higher municipal taxes.

The area of municipal taxation is complex and diverse. How Canadian municipalities – meaning cities, towns, villages, municipal districts, municipal regions, counties, etc. – treat land that serves as wildlife habitat for property tax purposes depends not only on authorizing provincial law, but also on how municipalities have regulated taxation under those laws. The author has written on this in detail elsewhere[15] and here will approach the subject in a summary manner. The discussion is limited to situations where a landowner allows a parcel of land to be used only for wildlife habitat protection purposes (with or without allowing public access) and carries out no agricultural or other activity on the land.

3.4.2. Three Potential Impacts of Wildlife Habitat Protection

There are three potential ways that leaving one's land open only for wildlife purposes could affect municipal taxation. The first is by changing the assessment class or value of the property, the second is by changing the taxation class and tax rate, and the third is where protecting land for wildlife habitat otherwise qualifies a property for special tax treatment.

3.4.2.1. Assessment

Regarding assessment class or value, property tax legislation typically requires assessors to assess the value of every taxable property in the municipality on a regular basis, normally annually. In most provinces assessors value all land and buildings on the basis of their market value. Market value is the price that would be struck by a willing seller and a willing buyer in an open market in an arm's length transaction. Some provinces' legislation requires that assessment be based on "fair value", "actual value", or similar concepts. These concepts sometimes incorporate methods other than, or in addition to, market value methods to ascertain the value of a parcel, including replacement costs, or

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[14]Nearly all of the states of the United States provide some kind of property tax relief for landowners who allow their land to serve as wildlife habitat or to serve other environmental or public values. This is documented in Arlene Kwasniak, "Local Revenue Base and Conservation Lands: A Law and Policy Review" (Paper prepared for the Conference on The Leading Edge Stewardship and Conservation in Canada 2003, University of Victoria, B.C., 3-6 July 2003). This section of the report borrows extensively from this conference paper. The paper is available online through links to commissioned research at <http://www.stewardship2003.ca>. The paper reviews the property tax legislation for each province and provides information on how U.S. state property tax laws treat conservation interests.

[15]*Ibid.*

accounting for features of land or real estate features that add or subtract value. This paper calls all such approaches a market value approach.

Some provinces' legislation allows for a preferential way of assessing farm property by not basing assessment on market value. In Alberta, for example, farm property that is actually used in farming operations is assessed at "agricultural use value", sometimes called "productive value". This means the value of the parcel is exclusively based on its use for farming operations, regardless of its market value. In Alberta, determining agricultural use value, an assessor must follow the procedures set out in the *Alberta Farm Land Assessment Minister's Guidelines*.[16] Using these Guidelines, assessors rate a parcel of farmland on the basis of its ability to produce an average net income under typical management practices. In doing so the assessor takes the land on an "as is" basis so that unfarmable areas, such as wetlands, forested areas, rocky soil, and bush do not add any value (or add little value) to the valuation. This way, assessment for agricultural use value is neutral with respect to preservation of natural features on rural lands. Invariably, at least in Alberta, land assessed at its agricultural use value is significantly less than land assessed at market value, especially for land located at the urban/rural fringe.

Leaving one's land open only for wildlife purposes can affect taxation if the easement changes assessment class or assessment value. Here are some ways:

- If the landowner places a conservation easement on the land, restrictions on use of property could require a lower assessment, especially if the land is located near an urban area and, without the conservation easement, likely would be developed.

- Where no agricultural uses of land at all are made, or where a conservation easement prohibits agricultural uses, provincial legislation might compel the assessor to assess the land in a non-agricultural category in which case municipal assessment likely would rise.

- It is conceivable that in time the presence of natural features on land protected by conservation easement will add to market value.

3.4.2.2. Taxation and Taxation Classes

For taxation, in contrast to assessment, purposes land is classified into one of usually a number of land classes or subclasses. Common classes are residential, commercial, and agricultural, though there may be others. At the taxation stage, the municipality, through a bylaw normally passed every year, assigns a taxation rate (often called a "mill rate") to

[16] *Standards of Assessment Regulation*, s. 2(2). The Minister's Guidelines may be viewed at the Department of Municipal Affairs, or at most public libraries.

a class. Sometimes provincial legislation sets out parameters for municipalities in setting tax rates, and sometimes legislation leaves it entirely up to the municipality. After assigning the appropriate class or subclass to a property, someone, normally the assessor, consults the tax rate bylaw. The assessor calculates property tax for every assessed parcel by multiplying the tax rate times the assessment amount for the property. Some provinces' legislation requires the tax rate to be multiplied by a percentage of the assessment value of the property. In these cases, percentages vary among classes of property.

Using land only as wildlife habitat could affect its tax class and consequently property taxes in a number of ways. For example:

- A municipality could have a tax class for conservation lands and qualifying under this class could result in taxes going down. This would be a true economic incentive.

- Using land only as wildlife habitat could require a change of tax class. For example, changing from an agricultural use to no use at all, other than habitat protection, might disqualify the land from beneficial treatment for agricultural lands. Normally this will result in higher taxes.

3.4.2.3. Other Tax Treatment

Other special tax treatment could result from full or partial tax exemptions. Property tax legislation sets out who or what is exempt from property taxation and often gives municipalities the right to allow other exemptions, or at least to have some kind of role in determining exemptions. Sometimes exemptions are total, and sometimes legislation sets partial exemptions or states that municipalities may decide to what degree a property is exempt from property tax. Some provinces' property taxation legislation provides for full or partial exemptions for land owned by some registered charities. Such legislation could be applicable to land trusts holding conservation easement interests,[17] though in the usual case it would only apply where the land trust owned the entire conservation lands parcel.

3.5. Environmental Management and Certification Programs

3.5.1. Introduction

Environmental management and certification programs are economic tools. Under these programs members of an industry undertake environmentally sustainable practices in

[17]The Province of Alberta, for example, currently is considering legislative amendments that would enable municipalities to allow an exemption (full or partial) for lands under conservation easement.

accordance with established rules and procedures. Although motivation for these undertakings varies, they largely stem from four sources. First, participating in the programs may give an industry a market edge. Second, voluntary participation might stave off the imposition of regulations. Third, participation may improve the public image of an industry. Fourth, participation demonstrates good environmental responsibility. This section describes some environmental management and certification programs that have a direct or indirect benefit of maintaining and improving conditions for wildlife.

3.5.2. Environmental Farm Plans

Environmental farm plans are voluntary, industry driven and government-supported programs designed to improve land stewardship in agricultural areas. The plans are attractive, as participating farmers believe they give them a competitive edge and help them maintain control of the management of agricultural land resources. One program describes participation in an environmental farm plan initiative as "an opportunity for farmers to take ownership of agricultural environmentalism."[18] Normally the environmental farm plan process is confidential unless certification is offered and sought.

Most environmental farm plans involve two steps. First, a farmer completes a farm review workbook and second, the farmer prepares an action plan. By completing the farm review workbook a farmer assesses his or her operation from an environmental and stewardship perspective. Depending on the program, worksheets in a workbook might include farm buildings, livestock and manure management, soil and crop management, and sensitive ecological areas and wildlife habitat. Completing the worksheets that are relevant to a farmer's operation will help him or her assess the degree of risk associated with farming activities. In the action plan step, a farmer sets goals to minimize environmental risks from farming activities. The workbook will contain information that will help a farmer carry out an action plan. A workbook might set out information on how to improve stewardship practices by, for example, retaining environmentally sensitive areas, riparian areas and connective habitat. In some programs government provides financial incentives to implement action plans, such as to construct livestock fences to protect riparian areas. For example, the Canada-Ontario Agriculture Green Plan provides up to $1500.[19]

Environmental farm plans are risk and education based. Both bases can be relevant to protection of wildlife and habitat. The risk base is relevant since agricultural activities that cause risk to humans often also cause risk to wildlife. For example, allowing cattle to

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[18]Atlantic Environmental Farm Plan Initiative, online: <http://www.newcomm.net/agricult/efpi/>.

[19]Information on this initiative, 1992-1997 online: <http://res2.agr.ca/initiatives/manurenet/env_prog/gp/gphompag.html>.

feed in riparian areas can constitute a health risk through water contamination from faecal material. As well, allowing these destructive impacts on riparian areas may increase hazards of floods and drought and associated economic risk. Protecting and maintaining riparian areas by, for example, retaining vegetation, fencing off problem areas and providing alternative cattle watering sites, can decrease health and economic risk. These same actions also improve the lot for wildlife in that they protect and improve the habitat of the many species that depend on productive riparian areas. The education base is relevant in that environmental farm plans normally provide information on how to care for the land and manage a farm from a stewardship prospective, even where there are no obvious risk connections.

A number of provinces either have or are developing environmental farm plans. For example, Ontario and Quebec developed environmental farm plan programs in 1993.[20] Through the next few years various Maritime Provinces followed and now are united under the Atlantic Environmental Farm Plan Initiative. This Initiative offers a standard environmental farm plan process as well as the opportunity for certificates where farm families show that an environmental farm plan has been implemented.[21] British Columbia has had an environmental farm plan program since the late 1990s.[22] Alberta is now developing a plan.[23] Environmental farm plans likely will become more prevalent Canada-wide in the next few years. Agriculture Canada recently announced potential funding and technical assistance to farmers who develop environmental farm plans. Funding and assistance are coordinated through the National Environmental Farm Planning Initiative.[24]

3.5.3. Sustainable Forest Management Certification

According to a recent study, forests cover nearly 50 percent or 417.6 million hectares of the Canadian landscape. Of this, provinces or the territories control 71 percent, the federal government controls 23 percent and about 425,000 private landowners control six percent. Approximately 19 percent of the timber cut annually is produced from private land. Of the balance, legislation requires that 22.8 million hectares be left in their natural

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[20]H. Maynard, "Farmers facing up to environmental responsibilities" (1993) REAP-Canada, online: <http://eap.mcgill.ca/MagRack/SF/Winter%2093%20G.htm>.

[21]*Supra* note 12.

[22]Ministry of Agriculture, Food and Fisheries, *Resource Management Plans, Nutrient Management Information Sheet*, June 14, 1999, Agdex 590/540 at 1.

[23]The author was a member of a multistakeholder committee struck to assist in the development of an environmental farm plan program for the province.

[24]Announced 6-26-02, see <http://www.agr.gc.ca/env/efp-pfa/index_e.php>.

state. Provincial or federal policy requires that timber harvesting be excluded in 27.5 million hectares. Two hundred and thirty-five million hectares are considered to be commercial forests of which about 119 million hectares currently are managed primarily for timber production.[25]

Numerous species of wildlife depend on forests for their existence. Obviously their well being and survival are heavily dependent on forest management practices in areas that are or will be managed for timber production. Legal rules governing timber production vary from province to province and depend on whether land is federally, provincially or privately owned. Although habitat may span jurisdictional boundaries, regulatory management controls follow jurisdictional lines and, with respect to private lands, are almost non-existent. How then can habitat protection be accounted for in forest management practices? One way is through universally accepted, credible, audited sustainable forest management certification systems that require key wildlife habitat protection as a condition of certification. The economic attractiveness of such systems is the assumption that forest products that are from certified forests will gain a market advantage.

Currently there are four major certification systems operative in Canada: Forest Stewardship Council, ISO 14001, the Canadian Standards Association and the Sustainable Forestry Initiative. To different degrees, each requires biodiversity and habitat to be taken into account in the certification process. The following section briefly describes them.[26]

3.5.3.1. Forest Stewardship Council

The Forest Stewardship Council (FSC) was formed in 1993. The FSC has formulated 10 principles and 56 criteria that need to be met before a forest can be certified. Accredited third party organizations conduct the certification based on the FSC principles and criteria. Particularly relevant to wildlife habitat protection are principles #6 and #9. Principle #6 states "Forest Management shall conserve biological diversity and its associated values, water resources, soils, and unique and fragile ecosystems and landscapes, and, by so doing, maintain the ecological functions and the integrity of the forest". Principle #9 provides "Management activities in high conservation value forests

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[25]D. Balsillie, *Comparison of Three Certification Systems in Use in Canada with the Requirements of the German Magazine Publishers for the Framing of Forest Certification*, Paper commissioned by the Canadian Pulp and Paper Association, July 2000.

[26]Unless otherwise noted, information contained in the descriptions is from the House of Commons Committee on Natural Resources and Government Operations report *Forest Management Practices in Canada as an International Trade Issue* (June 2000), online: <http://www.parl.gc.ca/InfoComDoc/36/2/NRGO/Studies/Reports/nrgo01/12-ch5-e.html#CHAPTER%202:%20CERTIFICATION>.

shall maintain or enhance the attributes which define such forests. Decisions regarding high conservation value forests shall always be considered in the context of a precautionary approach."[27] Certification standards are developed on a regional basis although in every case the overarching principles and criteria must be adhered to.

The FSC certification process involves assessment of management plans, forest practices and confirmation of chain of custody. The chain of custody process charts forest products from their point of origin in the forest through all stages to the point when they are delivered to the consumer as an end product. As at April 2005, 4.9 million hectares in Canada were certified to the FSC standard. Wood products from these forests were therefore eligible to bear the FSC label.

3.5.3.2. International Standards Organization 14001

The International Standards Organization 14001 (ISO) standard is a generic environmental management system standard that can apply to any industry and not only forestry. To meet the ISO standard for forest management, a company will follow generic procedures and develop specific indicators and criteria for sustainable forest management. It then designs and institutes a management system to achieve the goals as well as to monitor improvements. There are two uses that a company can make of complying with ISO standards. First, it can limit the use of the ISO standards to internal operations, or, second, it can seek third party certification. However, even if a company is determined to be ISO certified its products may not be labelled. This is because there are no performance requirements and no assessment of chain of custody. Nevertheless, many companies seek ISO certification. Of the 151 million hectares of forest certified in Canada under systems with performance and chain of custody systems, 137.9 million hectares are also ISO certified.

3.5.3.3. Canadian Standards Association

The Canadian Standards Association (CSA) is a not-for-profit membership-based association serving business, industry, government and consumers in Canada and elsewhere. The CSA, chartered in 1919, develops standards and certification programs for dozens of industries and products. The 1996 CSA sustainable forest management standard employs a continual improvement approach, and requires public participation and third party audited demonstration of sustainable forest management practices, and management commitment.[28] The CSA standard is based on the management principles of

[27]Available online: <http://www.fsccanada.org>.

[28]Information from Canada's National Sustainable Forest Management website at: <http://www.certificationcanada.org/English/csa/>.

the ISO but adds to them specific performance goals. It incorporates principles approved by the Canadian Council of Forest Ministers (CCFM), a group of provincial ministers that addresses forest issues relating to stewardship and sustainable development.[29] For CSA certification, a forest enterprise must show that the forest values to be sustained and the environmental goals to be achieved have been arrived at after public consultation. The forest management program must take into account the CCFM criteria and 80 indicators. Of importance to wildlife habitat protection, the first criterion is the maintenance of biological diversity. The program offers an optional chain of custody and labelling for products derived from a forest certified to the CSA Standard.[30] As of April 2005, about 63.7 million hectares of forest land were certified to CSA standards in Canada.

3.5.3.4. Sustainable Forestry Initiative

The American Forestry & Paper Association developed the Sustainable Forestry Initiative (SFI) standard in 1991. The standard "integrates the perpetual growing and harvesting of trees with the protection of wildlife, plants, soil and water quality and a wide range of other conservation goals."[31] The standard requires compliance with ISO guidelines. Members of the Association must agree to abide by the standard. Canadian forest companies enter the Association through a licensing agreement. The Association is overseen by an independent external review panel of representatives from the environmental, professional, conservation, academic and public sectors. The Association claims that "members of the American Forest & Paper Association are revolutionizing the way that private forests are managed in the U.S. Sixteen member companies have been expelled from the Association for failure to uphold the standard set by the SFI program."[32] Members are required to complete the annual self assessment. Companies also may seek third party verification that SFI standards are being met. As of April 2005, 36.8 million hectares of forest land were certified to SFI standards in Canada.

3.6. Payment for Provision of Habitat

3.6.1. Introduction

Throughout Canada there are only sparse regulatory requirements to protect and maintain wildlife habitat on privately owned lands. Other papers in this series review the federal or provincial laws that regulate some aspects of listed species habitat on privately owned

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[29]The website for the Canadian Council of Forest Ministers is <http://www.ccfm.org>.

[30]Information from CSA website at <http://www.certificationcanada.org/english/csa/>.

[31]Information from the SFI Program website at <http://www.certificationcanada.org/english/sfi/>.

[32]*Ibid.*

land. However, other than as required by this narrowly focused habitat protection legislation, wildlife habitat on privately owned lands exists largely because of the good graces of private landowners, or because private landowners have not gotten around to developing their land and destroying habitat. A way to address the regulatory gap is for society to give landowners financial incentives to practice land stewardship and to maintain habitat. In other words, farmers and other private landowners would be paid to maintain wildlife habitat.

3.6.2. Traditional Examples

Payment for farmers and others agreeing not to farm or carry out other activities that adversely affect habitat is not a new idea. For example, for decades governments and non-governmental agencies have had programs to pay farmers for crop loss through waterfowl depredation when farmers agree to maintain wetland and riparian habitat.

A more recent Alberta example is the Alberta Landowner Habitat Retention Program, created in 1986. Under the program landowners receive an annual financial incentive payment in return for long term (usually 20 years) retention of wildlife habitat on their land.[33]

Farther west, the British Columbia Greenfields Project began in 1990 as a partnership between the Canadian Wildlife Service, Ducks Unlimited Canada, the Environmental Youth Corps, Wildlife Habitat Canada, the British Columbia Federation of Agriculture, University of British Columbia, the Delta Farmers Institute, and participating farmers. The project's objective is to combine maintaining wintering waterfowl populations with successful farming on the Fraser River delta. The project offers cash incentives to farmers for planting winter cover crops after fall harvest. The winter cover prevents soil erosion while providing food for waterfowl.[34]

3.6.3. Out of the Box Example

A prominent atypical but very successful example comes from the United States. It is the New York Watershed Protection Project. The project arose out of a 1989 United States Environmental Protection Agency requirement that the City improve its filtration system to control pathogens in the City's water supply. The improved filtration system would

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[33]The Landowner Habitat Retention Program originated with the Alberta Government, Fisheries and Wildlife Division. It is now overseen and implemented by the Alberta Conservation Association. Information on the program is available online: <http://www.ab-conservation.com/projects/project_details.asp>.

[34]Information on this project is available online: <http://dev.stewardshipcanada.ca/caseStudies/cs_builder.asp?request_no=101>.

have cost between six and eight billion dollars and would require an annual upkeep of between three and four hundred thousand dollars. Faced with such enormous financial burdens City advisors sought an alternative. The alternative came in the form of payment and technical advice to landowners who farmed upstream, where much of the pathogen problem originated. Payment and advice were to either not farm land or carry out livestock operations in the upstream watershed, or to farm or carry out operations in a manner that best addresses soil erosion, livestock waste, and use of chemicals, pesticides and fertilizers. The program resulted in considerable savings to the City. The cost of the program is only about seven million dollars a year. In addition to solving the City's problem in an economically sound way, farmers benefit both financially and through the technical assistance they receive.[35] An indirect result of the program is an increase of wildlife habitat and a reduction of agricultural practices and the use of chemicals that could harm wildlife.

3.7. Economic Recognition of the Value of Ecological Goods and Services and Impact on Wildlife and Habitat

'Ecological goods" are the products of processes and interactions of earth's natural systems. They include clean air, fresh water, timber, fibre, and food. The "ecological services" provided by processes and interactions of the natural world include the production of clean air and fresh water, groundwater recharge, decomposition of waste, and maintenance of biodiversity.[36]

The production of food and other goods may be done in a variety of ways. Some ways tend to lay waste to environmental services, for example destroying a rainforest to plant forage for intensive livestock operations, and some are neutral or enhance their delivery, such as the production of shade grown coffee. Full cost accounting in the production of food and other goods would take into account the costs of environmental degradation and loss of ecological services, thereby making environmentally unfriendly goods more expensive. Similarly, taking into account the ecological services engendered through environmentally friendly production, would add to the costs of goods since the producers would be paid for these goods and services. Such full cost accounting should help level the playing field and give consumers a choice without it inevitably meaning paying more to cast their vote at the cash register in favor of environmentally friendly production. This is because goods that are produced in a manner that have few environmental costs (e.g., some organic foods) often cost more to the consumer than

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[35]American Farmland Trust, *American Farmland* (Washington, D.C.: Fall 1998).

[36]The *Land Stewardship Centre of Canada,* situated in Edmonton, Alberta, is a strong proponent of our economic system recognizing the value of ecological goods and services. For further information on ecological goods and services visit the Centre's website at <http://www.landstewardship.org>.

goods produced in such a way that environmental costs are not internalized. The internalization of environmental costs should tend to equalize the prices of goods regardless of manner of production, and even make goods with substantial environmental costs more expensive than goods with fewer environmental costs. Hence consumers will be able to choose goods that have been produced in an environmentally friendly manner over those that have been produced in an environmentally destructive manner without having to pay a premium. Using economics in this way should often have the effect of conserving wildlife and wildlife habitat. For example, shade grown coffee provides better habitat for birds than a run-of-the mill coffee plantation. Closer to home, grains and other agricultural products produced without any or only minimal pesticides can result in a less polluted and dangerous habitat for beneficial insects, fish, migratory birds, and many mammals.[37]

3.8. A Caution About Payment for Retention of Environmental Values

Although the author is a strong proponent of economic recognition of the role of ecological goods and services in determining the cost of products, she wishes to caution about payment for the provision of ecological goods *per se.* As society struggles to address continuing environmental degradation, novel ways will flourish for payment for retention of environmental values, or what are sometimes called "public goods". For example, it will not be long before programs develop in Canada to pay farmers to retain grasslands and bush for carbon sequestering. This obviously will have positive impact on wildlife and habitat. The approach has been tried in the United States.[38]

In the author's view society should be careful as it travels the road to seeing environmental values as commodities. It is true that all citizens benefit from public goods and expect them to be sustained. Those who promote payment for retention of public goods note that their retention has a cost of production and argue that those who benefit from the retention of the public good – society – should pay that cost. But nevertheless, in the author's view sometimes it is appropriate to commoditize environmental values and sometimes it is not. Society should tread carefully lest the costs outweigh the benefits.

Consider wildlife habitat. What is the cost of production of maintaining wildlife habitat as a public good? The cost is the amount of money lost by not developing land

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[37]See U.S. Fish and Wildlife Service, Division of Environmental Quality, "Pesticides and Wildlife", online: <http://www.fws.gov/contaminants/Issues/Pesticides.cfm>.

[38]See E5 Environmental Inc., *Ag Summit 2000: Environmental Stewardship Action Team Strategic Action Plan*, (St. Albert, AB: March 2002) for a discussion of innovative methods of rewarding farmers for retention of environmental goods and services. The plan is available online: <http://www.landstewardship.org/agsummit2002-esatfinalreport.rtf>.

and destroying habitat. If wildlife habitat is commodified in this manner, an analysis of 'financial projections' might determine whether it is retained. Financial projections will set out whether there is more economic return in developing land (and destroying habitat) or in preserving it. The bigger dollar return wins. This example of payment for retention of habitat as a public good ignores ethical and quasi-ethical arguments that conclude that wildlife habitat should be maintained because it is the right thing to do. Good stewards usually retain habitat because they are bigger than their pocketbooks. They see themselves as part of a community larger than their farm and larger than the human occupants of their community. Paying for retention of habitat can override, delay, and stunt development of a land stewardship ethic. It also can cut into and hamper the good works of conservation organizations that depend on landowners participating in habitat protection programs for little or no compensation.

This is not to say that good stewards should not be given financial and other assistance and recognition for their stewardship practices. Of course they should. As mentioned earlier, the costs of diminishing and the benefits of enhancing ecological goods and services should factor into the price of goods. As well, other financial incentives to engage in good land stewardship practices, including retention of habitat, play vital roles in achieving wildlife objectives and in developing a stewardship land ethic. It is only to say that society should carefully weigh the consequences before it starts treating environmental values as commodities. It should be careful so that payment for retention of environmental values is complementary to true stewardship, but does not override or replace it.

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