### **CAGP OTTAWA ROUNDTABLE CHAPTER**

February 5, 2009

### GIFTS OF LAND CHANGING GROUND RULES

By Karen J. Cooper, LL.B., LL.L., TEP.

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#### WE'RE GOING TO LOOK AT ....

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- Donors and their land 3 scenarios
- Land gifting tools to use with donors

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- Ecological gifts tax examples
- Your Q&A's

#### MY LAND.....

- I am deeply rooted to this land
- It's my family land
- This land (my buildings) has a story to tell
- I am connected to the natural setting
- I know all the trees, birds, flowers here
- There were people here long before me

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#### I WANT TO KNOW THAT YOU WILL....

- Take care of it for me after I leave it
- Respect what I care about
- Keep the historic buildings safe
- Protect the wildlife and trees
- Use it (proceeds from it) wisely

#### IT WOULD BE AWFUL IF SOMEONE...

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- Logged it/clear cut it
- Drained my wetland
- Took down my family home
- Built on top of the midden
- Carved it up for a subdivision

#### COULD THIS BE YOUR NIGHTMARE?

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#### LOCAL WETLAND DRAINED

#### **Aqua Hospital Foundation Sale Condemned**

The people of Aqua are calling for a public inquiry after learning that the Aqua Hospital Foundation sold land donated by well-known naturalist Mrs. EO Frog to a developer with a history of .....

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#### WHAT CAN YOU DO?

- Listen to your donor
- Find out what the land is telling you
- Look for a gifting tool that will protect key features & elements

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- Natural
- Historic
- Archeological
- Recreation

#### WHAT ARE YOUR OPTIONS?

- Ecological gift
  - Total property donation
  - Partial rights covenant
- Split receipts: sale/donation
- Subdivision (donation to land trust, sale of other parcels)
- Community purchase of land (donations to land trust to purchase from you)

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#### WHO CAN HELP YOU?

- Assessment of land values
  - The donor
  - Locals (first nations, naturalists, historians, land trust representatives)
  - Professionals (Biologists, archeologists, historians, museum/archives staff)

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#### WHO CAN HELP YOU?

- Gifting mechanisms
  - Professional advisors (tax, legal)
  - Ecological Gifts Program staff
  - Land trust representatives
  - Assessors
  - Land surveyors

#### TAX BENEFITS – EXAMPLE 1

 Assume that the undivided property in the Gulf Islands, Alberta or Ontario has a cost ("ACB") of \$700,000 and a certified fair market value ("FMV") of \$1,000,000

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- Assume that the property may be certified as ecologically sensitive land and that the donor is considering an ecological gift
- Assume donor has taxable income of \$150,000

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#### TAX BENEFITS FOR DONOR

- Immediate donation tax credit available in year of gift of FMV of \$1,000,000
- Entire donation may be used not limited to 75% of taxable income like other gifts
- With an income of \$150,000 and a marginal tax rate of 46%, the donor will want to claim a donation tax credit of about \$150,000 to offset any tax liability arising in the year of gift

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#### TAX BENEFITS FOR DONOR (CONT'D)

- The remaining \$850,000 may be claimed in the five (5) subsequent years
- No tax on the capital gain (FMV ACB = \$300,000) arising as a result of the disposition of the property
- If an ordinary gift of land, the donor would pay tax on a taxable capital gain of \$150,000 and need to claim a donation tax credit of about \$300,000 to completely offset any tax

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#### TAX BENEFITS - EXAMPLE 2

- Assume that the same property is owned by a real estate developer who holds the property on income account (e.g. not capital) or as inventory
- While the property could still qualify as an ecological gift if the land is ecologically sensitive, there would be little tax benefit

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#### TAX CONSIDERATIONS FOR DONOR

- The donor would have to include in income the proceeds of disposition (deemed to be the FMV of the property) triggering tax on \$1,000,000
- The tax on the disposition would be offset by the donation tax credit on \$1,000,000 gift
- No benefit from the elimination of tax on capital gains since property is held on account of income

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#### TAX BENEFITS – EXAMPLE 3

- Assume that the donor in scenarios 2 and 3 wants to retain the right to use the home during her lifetime and make a ecological gift of the remainder
- Certified FMV of gift is \$600,000 it is generally the current appraised FMV of the gift less the value of the life interest (IT 226R)

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#### TAX CONSIDERATIONS FOR DONOR

- Immediate donation tax credit in year of gift even though able to continue to use the property
- Remainder of the donation may be carried forward for 5 years
- No tax on the capital gain arising as a result of the disposition of the remainder interest

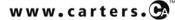
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#### TAX BENEFITS - EXAMPLE 4

• Assume that the donor in scenario 1 wants to sell the land to a land trust at a 50% discount, e.g., for \$500,000, and that the original cost of the lands was only \$100,000

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• Split-receipt situation



#### TAX CONSIDERATIONS FOR DONOR

- One half of the transaction will be treated as a sale, such that the donor will have to include in income the taxable capital gain on part of the disposition.
- Since the price paid is 50% of the FMV, 50% of the capital gain will be subject to tax:
  - 50% of the cost = \$50,000
  - \$500,000 \$50,000 = \$450,000 capital gain
  - \$250,000 taxable capital gain
- But if agricultural land, lifetime exemption?

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### TAX CONSIDERATIONS FOR DONOR (CONT'D)

- Immediate donation tax credit available in year of gift of FMV of \$500,000 which would offset any tax arising on the sale portion
- Remainder of the donation may be carried forward for 5 years

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  - TLC The Land Conservancy of BC

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#### RESOURCES

- **Ecological Gifts Program (Environment** • Canada)
- www.....
- **Canadian Land Trust Alliance** ٠
- Land Trust Alliance of BC ٠
- **Creating a Green Legacy: The Ecological** • Gifts Program by Karen J. Cooper, *Charity* Law Bulletin #81 available at www.carters.ca

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