



# Ecogifts and Land Donations from the Development Community

## Considerations and Possible Strategies

Blair Hammond  
Canadian Wildlife Service

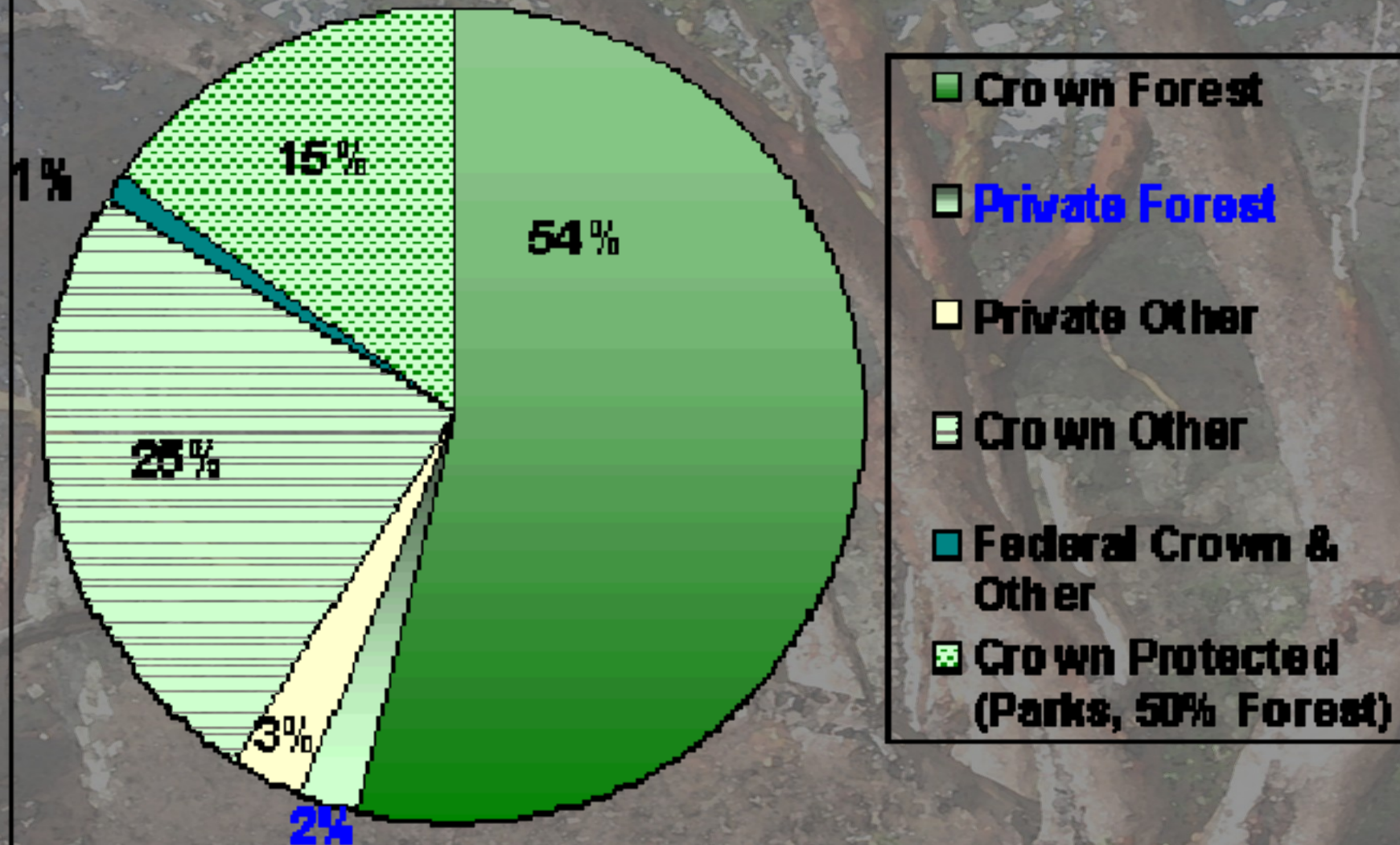
March 2007

# Outline

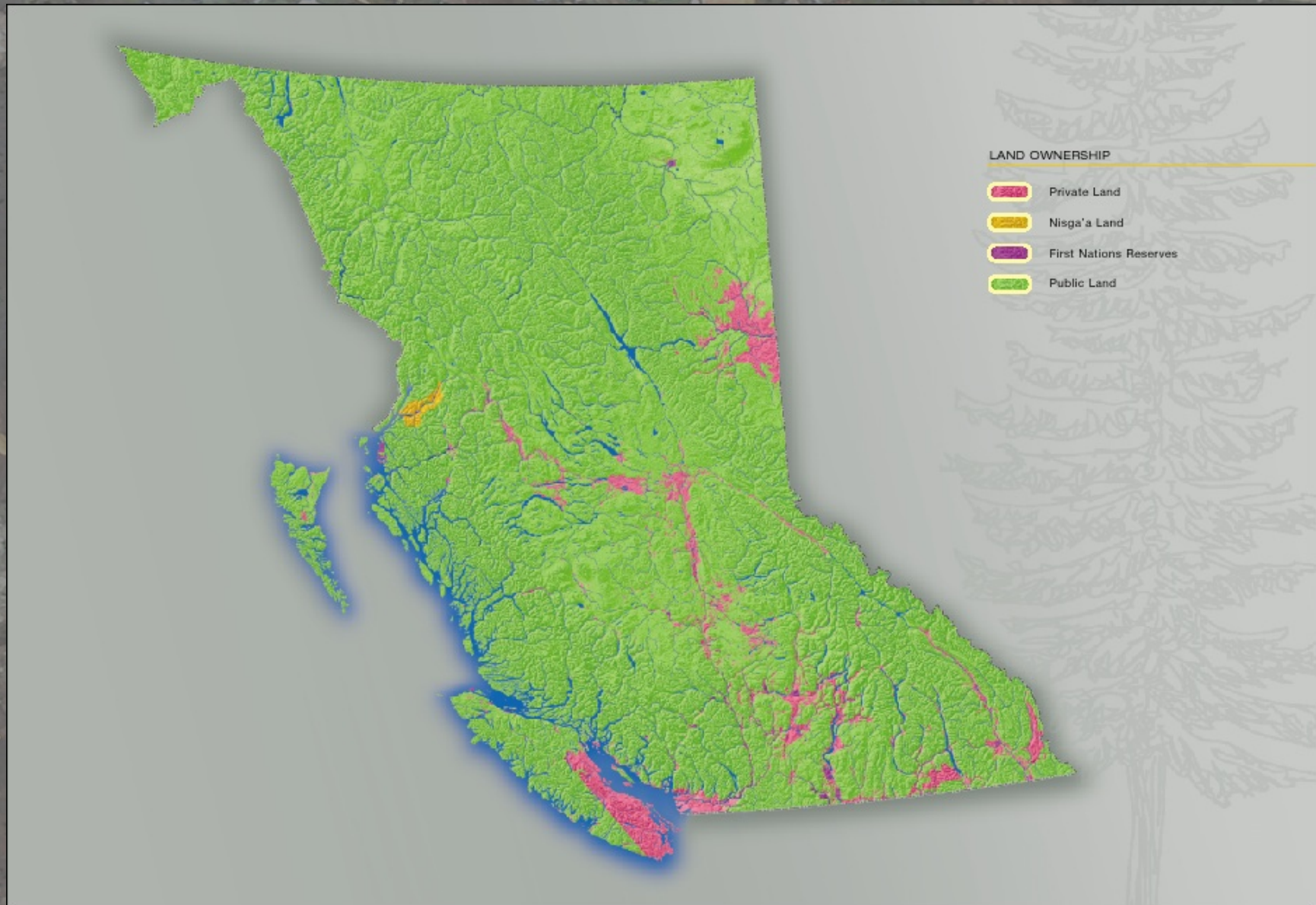
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- Land Tenure in BC
- Ecogift Fundamentals
- Why be interested in development lands?
- Why should developers want to work with the land trust community?
- Inventory lands
- How to make it work (sometimes)
- Success Stories
- Land Conservation Funds
- Summary

# Land Ownership In British Columbia

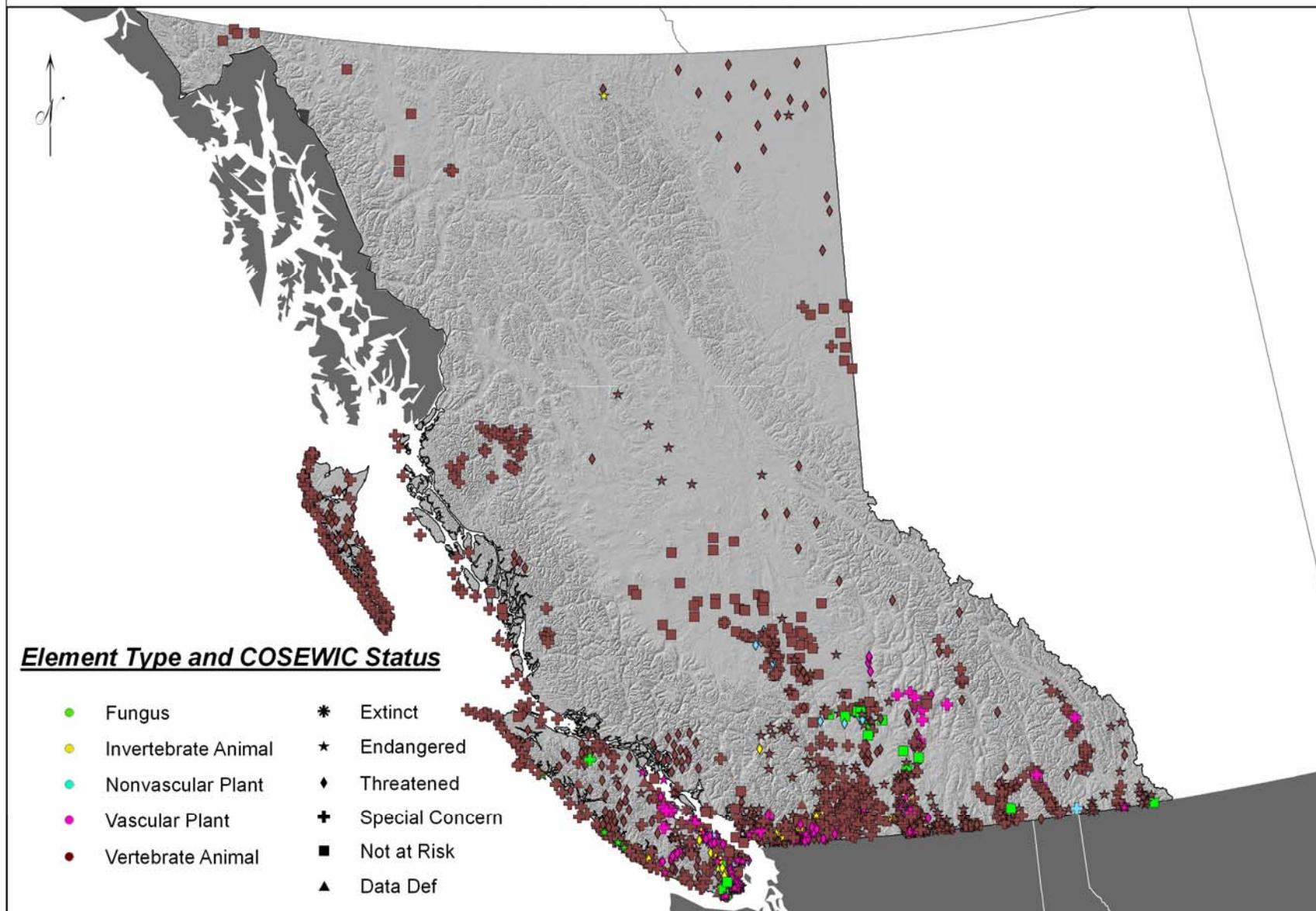


# Land Ownership in BC



# COSEWIC Assessed and SARA Listed Species Distribution in British Columbia

January 2007 BC Conservation Data Center Element Occurrence Centroids



# Overview of the EGP

- The EGP offers income tax incentives to landowners who donate land or certain interests in land
- Property interests donated through the program receive substantially better tax treatment
- To receive this superior tax treatment, there's a process

# The Tax Incentives

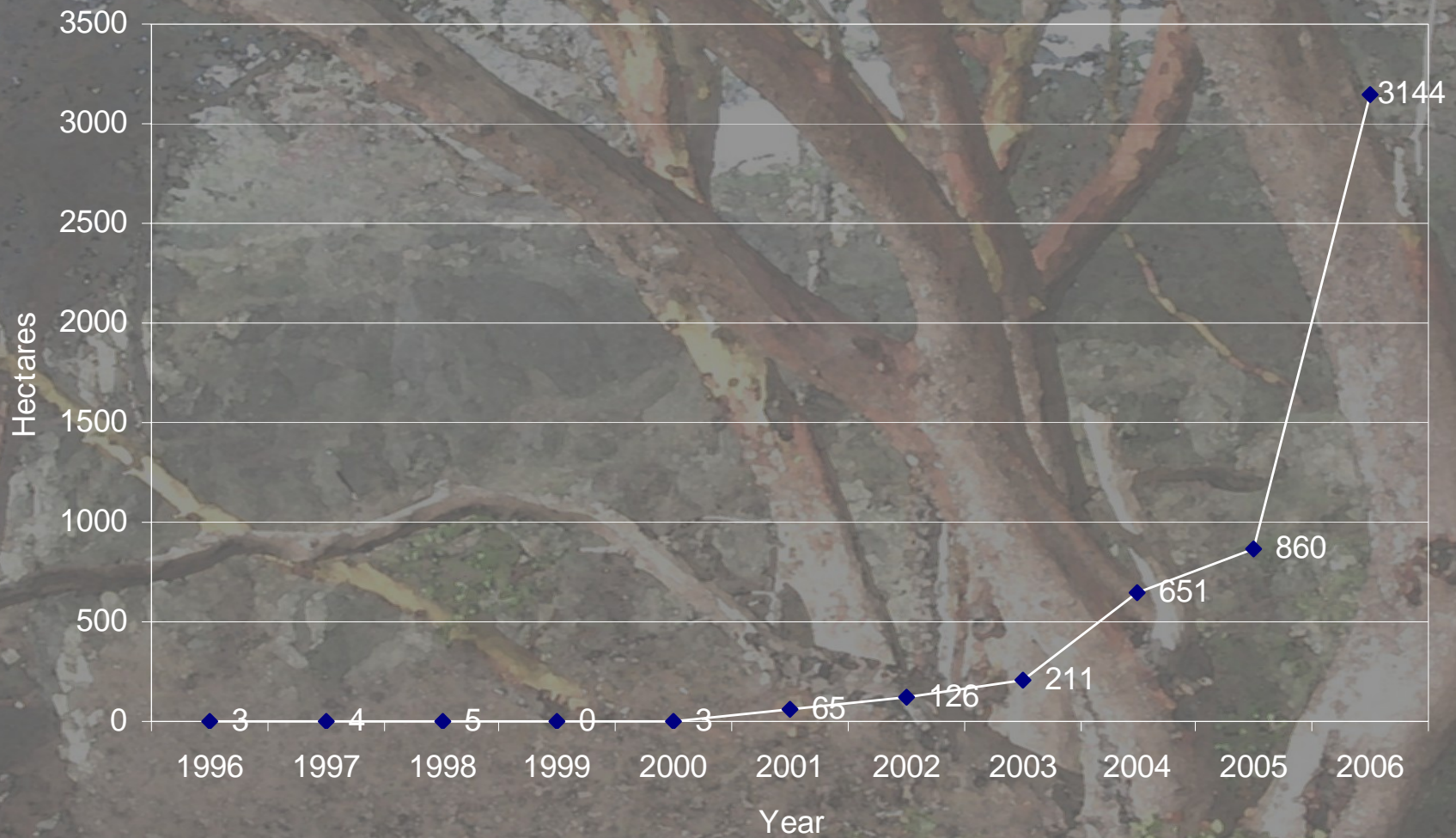
- A deduction for the Fair Market Value of the ecogift
- No capital gain on the transfer
- No limit to the total value of ecogift donations eligible for deduction
- Deductions can be used over 6 years

# Other Incentives

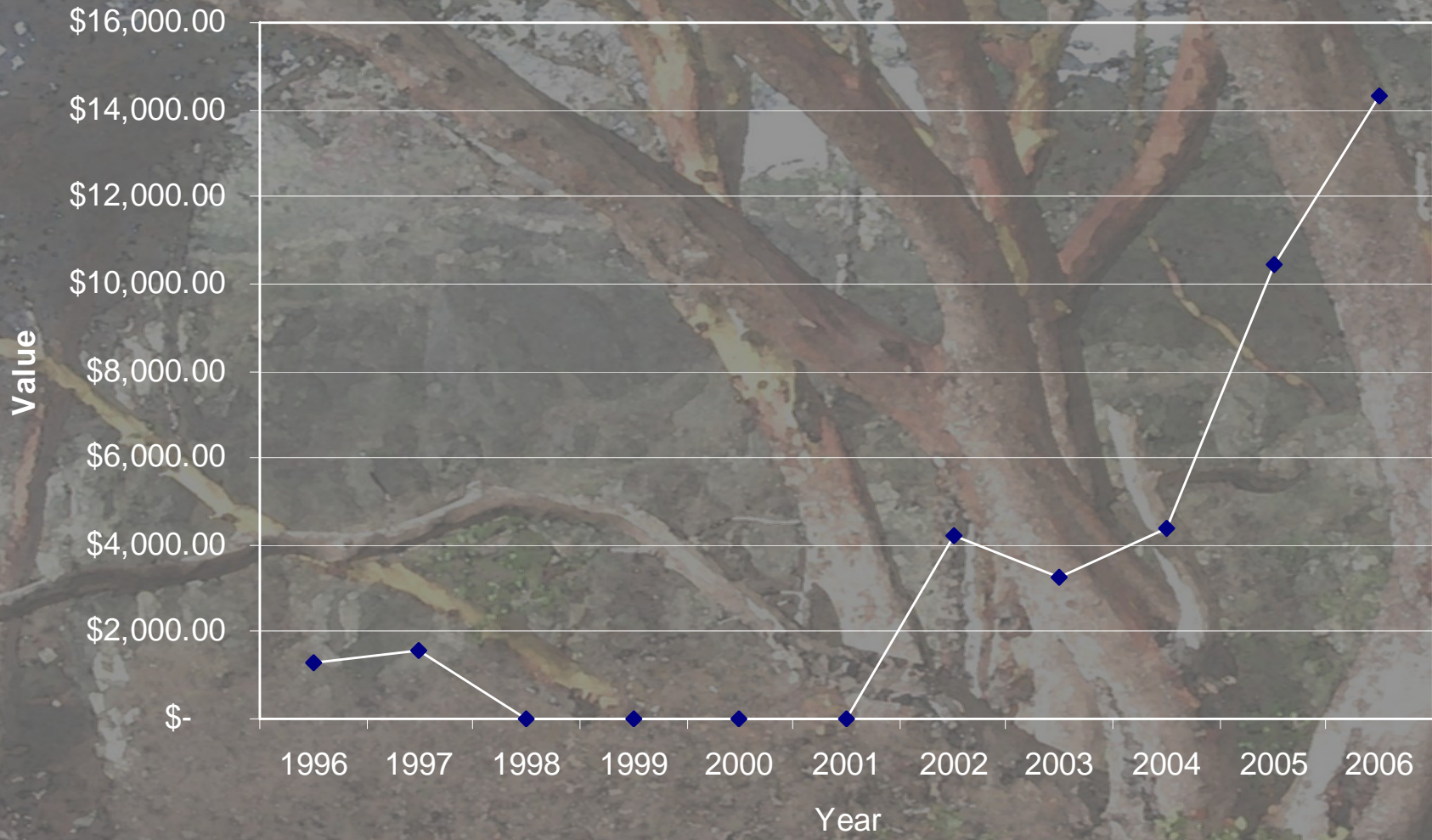
- Long term security for donated properties due to special *Income Tax Act* provisions
- Excellent opportunity for cause-based marketing and community relations



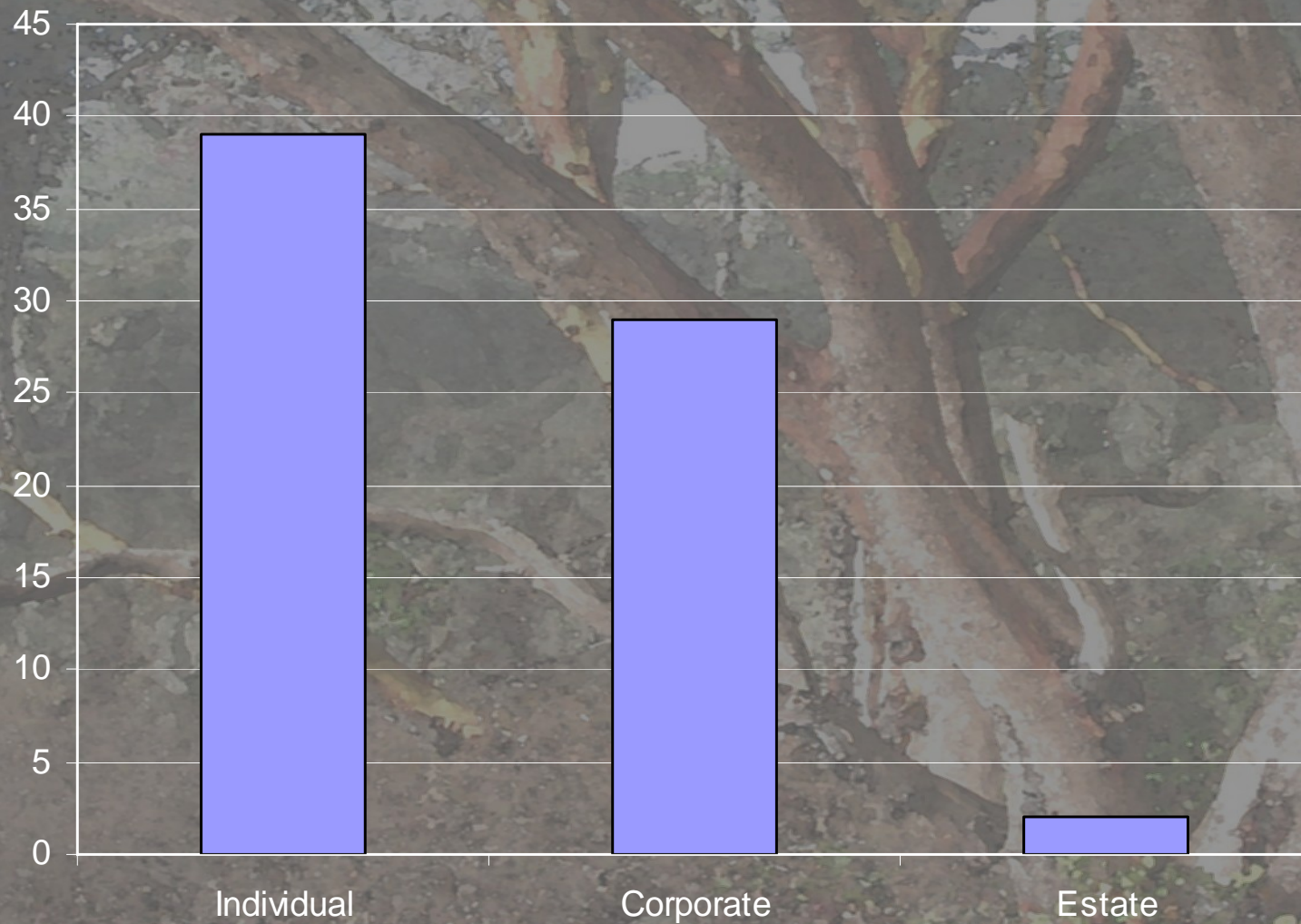
# Area of Ecogifts Donated by Year



# Value of Ecogifts by Year



# Ecogifts by Donor Type



# Why Should Land Trusts Work with the Development Community?

- Large percentage of endangered ecosystems are on private lands
- A significant portion of private lands are owned by the development community
- The pressure for urban and rural growth means much of the remaining undeveloped lands will be built out in the next decade in parts of BC

# Why Should Developers Work with Land Trusts?

- Higher Property Values
  - Properties adjacent to green space are worth 5-20% more
- Faster Sales
  - Properties near green space tend to sell more quickly
- Reduced Costs
  - Cluster development can reduce the capital costs of subdivision development by 10-33%

# Why Should Developers Work with Land Trusts? (2)

- Increased likelihood of speedier approvals of plans.
  - Proposals where developers are working with the community are viewed more favourably.
- Recognition
  - Increased respect through association with social and ecological values.
- Improved marketing opportunities.
- Tax advantages

# Tax Advantages

- The tax benefits of donating ecologically sensitive land & covenants can be significant and include both:
  - Income tax benefits
  - Property tax benefits
- But not all ecologically sensitive lands are treated equally under the *Income Tax Act*
  - Gifts of land outside of the EGP
  - “Inventory Lands”

# What Constitutes Inventory Land?

- “Inventory lands” are lands acquired by corporations or individuals for the purpose of subsequent sale rather than for the purpose of producing rental, agricultural or other income, or personal enjoyment

# Inventory or Capital Land?

- Not straightforward to distinguish
- *Income Tax Act* does not provide any guidelines
- Necessary to look to case law for guidance on what constitutes a disposition of inventory and what constitutes a disposition of capital property.

# Interpretation Bulletin IT-218R

- the taxpayer's intention at the time of purchase;
- feasibility of the taxpayer's intention;
- geographical location and zoned use of the real estate;
- extent to which intention is carried out by taxpayer;
- evidence that the taxpayer's intention changed after purchase of the real estate;
- the nature of the business, profession, calling or trade of the taxpayer and associates;
- the extent to which borrowed money was used to finance the real estate acquisition and the terms of the financing, if any, arranged;
- the length of time the taxpayer held the real estate;
- whether other persons than the taxpayer share an interest in the real estate and, if so, the nature of their occupations, their stated intentions and course of conduct;
- factors which motivated the sale of the real estate;
- evidence that the taxpayer and/or associates had dealt extensively in real estate.

# What Difference does it Make?

- Gifts of inventory lands can qualify as ecogifts if made to eligible recipients and certified as ecologically sensitive...
- But, for tax purposes, the donation of inventory is essentially treated the same as a cash donation
- Profit deemed to be derived from the disposition of inventory (fair market value - cost and other allowable expenses) must be included in the taxpayer's income for the year.

# Example of Tax Treatment of Gift of Inventory Land

- Land Development Inc. decides to donate 30 acres to protect important wildlife habitat
- LDI's costs attributable to the 30 acres were \$100,000.
- FMV was \$250,000.
- The land is considered inventory
- LDI has other income of \$800,000 from land sales for the year and other costs of \$600,000.

# Example of Tax Treatment of Gift of Inventory Land

- **Calculation of taxable income**

- **Example 1**

• Sales of land	\$ 800,000
• Value of land donated	<u>250,000</u>
• Gross income	1,050,000
• Less costs (including \$100,000 costs associated with donated land)	<u>700,000</u>
• Net income	350,000
• Less deduction for donated land	<u>250,000</u>
• Taxable income	100,000

# Example of Tax Treatment of Gift of Inventory Land

## Example 2

- Land Development sells the land for fair market value and makes a cash donation of \$250,000 to Wilderness Conservancy Group.
  - Sales of land (and gross income) \$1,050,000
  - Less costs 700,000
  - Net income 350,000
  - Less deduction for cash donation 250,000
  - Taxable income 100,000
- Note: potential to run into 75% deduction limit

# Reason to Despair?

- A potentially strong disincentive for some developers to donate ecologically sensitive lands



# Never, Ever Give Up

- Despite the impediments, there are sometimes ways of conserving development lands and making it work for both parties.



# Making it Work

- There are several important points to consider:
  - many developers would not be interested in tax incentives even if their land was not inventory
  - the other reasons for developers to work with conservation groups still apply even if the tax advantages don't
    - higher property values, reduced costs, faster sales, faster planning approvals, recognition
  - not all lands owned by developers are necessarily inventory land

## Making it Work (2)

- Need to remember that land donations and fiscal incentives are only one possible tool
  - Cash is the ultimate fiscal incentive
- Is your 'gift' a gift?

# Is Your 'Gift' a Gift?

- A gift under the *Income Tax Act* is a voluntary transfer of property without valuable consideration.
- Any legal obligation requiring a donor to make a donation would result in the donation losing its status as a gift.
  - e.g. if a land developer is compelled, as part of obtaining development approval, to donate land for a park, the transfer may not be voluntary and, therefore, would not fall within the definition of “gift”.
- Interpretation Bulletin IT-110R3, Part I, section 3.

# Making it Work (3)

- Be strategic
  - have an inventory of ‘target’ lands in your area of operations
    - Sensitive Ecosystem Inventory?
  - develop a landscape level plan to help guide your acquisition strategy
  - make your priority areas known so that developers are not caught by surprise

# Making it Work (4)

- Help make sure that developers in your community know about the inventory land issue
  - communications and outreach with developers and city planners
- With some advance warning, developers can arrange their affairs and seek the advice necessary to make things work from a tax perspective

# Success Stories

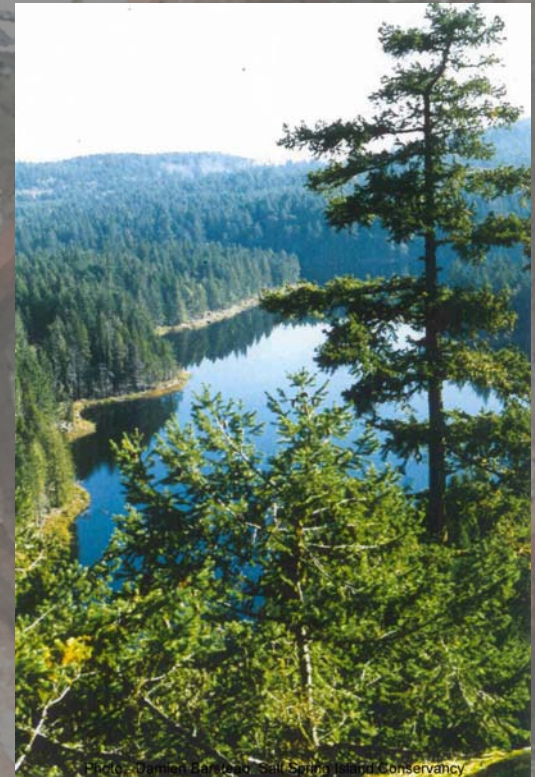
- Matson Lands

- Esquimalt
- Garry Oak Remnant
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- Garry Oak Remnant
- Previous development proposals rejected
- Mandalay Developments donated 1 ha as an ecogift to NCC ( also involving HAT)
- Township modified zoning to allow for densification away from Garry Oak



# Success Stories (2)

- Maxwell Lake
  - TLC & Salt Spring Island Conservancy
  - Watershed protection
  - Strong public opposition to development
  - Developer donated >100 ha covenant
  - Local government agency secured the underlying title



# Success Stories (3)

- Englishman River
  - Englishman River Land Corporation
  - Two gifts to TNT totaling over 112 ha
  - mature and old growth coastal forest and riparian habitat
  - part of a larger, highly complex transaction
  - development in less sensitive areas goes ahead



# Summary of Successes

- Two of three examples were successful because the land trusts involved had adopted a strategic approach.
  - clearly identified priorities ahead of time
  - plenty of notice
  - commitment to making it work for all parties
- The third example came down to the wire and was made to work because of strong community pressure.
- All three examples included coordination with local government

# The Role of Local Governments

- Local governments have significant power, and sometimes significant resources, to protect land
  - zoning
  - development approval process
  - property tax breaks
  - cash and in-kind contributions to land securement funds
- But...they are often severely under-resourced
  - limited staff
  - may be missing important expertise

# Working with Local Governments

- Get to know your planners and parks staff
- Sponsor training and education workshops for local government staff and elected representatives
- Participate in community planning processes
- Establish a local conservation fund using special property tax levies

# Establishing a Local Conservation Fund

- CRD and GVRD have done it
  - Great success with the GVRD biodiversity strategy and CRD 'sea to sea' initiative
- Rural communities can do it too!
  - tax base is smaller, but the land is often much, much cheaper
- We're getting started on this within the East Kootenay Regional District

# Developing a Local Conservation Fund

- A highly successful model in the USA
  - \$5.73 billion approved in ballot measures last year
  - mechanics here are different, but concept the same
- There is no formula, but here's what we're doing in the east Kootenay:
  - Form an effective partnership involving all those interested in conservation in the region
    - be inclusive!!
  - Take the pulse of your community
    - invest in some high quality public opinion research

# EKCP Opinion Research

- Engaged a professional public opinion research firm to assess community support for conservation
- Poll included questions related to willingness to pay
- Also did focus groups to ‘drill deeper’
- The results are strongly supportive!

# EKCP Polling Results

- Poll respondents indicate that wildlife, recreation and scenery are the best parts of living in the region
- The biggest concerns are related to water quality and the pace and nature of growth
- Over 80% of respondents indicated a willingness to contribute to a local conservation fund through a dedicated addition to property tax

# A Local Conservation Fund

- The EKRD is large geographically, but has only ~ 60,000 residents
- Focus group research indicated a strong support for an ~\$20 per household contribution to the proposed fund
- Could result in up to \$1 million per year for 10 years in support of stewardship
- Planning to go to referendum in one year

# Summary

- There are strong incentives that should encourage both developers and land trusts to work together
- Avoid the temptation to see developers as ‘the bad guys’
- Tax incentives for land donations are but one available tool
- Being strategic and working closely with local governments to use other tools will greatly increase your success



# Questions or Comments?

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