

process for certifying ecological gifts, as well as criteria for defining environmentally sensitive lands. For copies contact Environment Canada, [ecogifts@ec.gc.ca](mailto:ecogifts@ec.gc.ca)

Information is also available at [http://www.cws-scf.ec.gc.ca/ecogifts/intro\\_e.cfm](http://www.cws-scf.ec.gc.ca/ecogifts/intro_e.cfm)

**Giving It Away: Tax Implications of Gifts to Protect Private Land**  
Ann Hillyer and Judy Atkins. 2000. West Coast Environmental Law Research Foundation, Vancouver BC.

A guide for government agencies and conservation organisations about the potential tax benefits and tax liabilities of gifts of land or an interest in the land, where the gift is made for the protection of ecologically significant spaces or environmentally significant features. A guide to the laws, regulations and policies governing tax issues when a landowner donates private land or grants a conservation covenant. Also available at [www.wcel.org](http://www.wcel.org)

#### **Natural Area Protection Tax Exemption Program**

More information on this program can be found on the Islands Trust website at [www.islandstrust.bc.ca](http://www.islandstrust.bc.ca)

### **4.6 Land Acquisition**

Sometimes the best way to protect a natural area is for a local government or conservation organisation to purchase the land outright.

Historically, the acquisition and management of natural spaces was left to government, often through the purchase of land as a public park. While this is still an important role, the escalation of land prices and the reduced availability of agencies to purchase lands outright have led to new approaches.

Revisions to provincial legislation over the last decade have meant that local governments and land trusts can work more flexibly and cooperatively with land developers and landowners to acquire lands for the protection of natural areas.

#### **4.6.1 Municipal Acquisition**

There are several ways in which a municipality can acquire land for the purposes of protecting natural values:

- Acquisition during **subdivision**;

- **Donation or transfer** of land from a private owner, perhaps using eco-gifting;
- **Direct purchase** from a private owner, perhaps using funds from a park acquisition fund; or
- **Joint purchase** with the help of another level of government or a non-government organisation.

Acquisition can be a useful tool, when:

- Land acquisition is the only option to prevent land development;
- Land acquisition offers the best long term protection of the natural values of the property; or
- The owner is willing to sell at or below a fair market price.

It is important to also consider the long-term use and management of the acquired area, to ensure that natural values are protected in the long term. The area should be managed to ensure that recreational or other uses do not damage ecological features, and it may be necessary to remove or control invasive species that could destroy habitat values.

If the area is created as a municipal park, it may be useful to place a conservation covenant on the property (with a conservation organisation as one of the covenant holders) (see also section 4.7.4: Conservation Covenants). This would prevent a future council deciding the area would be better as a ball field or other type of park use.

#### **4.6.1.1 Park Dedication by Subdivision**

When land is subdivided, there can be an opportunity to acquire park land at no cost to the municipality. (This does not apply where fewer than three lots are being created, or where the smallest lot is larger than two hectares.) This option is best suited for small parks within a subdivision, and could be used for acquiring areas with environmentally sensitive features.

The *Local Government Act* (section 941) requires that when land is subdivided, either land or an equivalent payment must be provided for public parkland. The municipality can require the developer to provide up to 5% of the area as park (at no cost) in a location acceptable to the municipality. If there is no suitable park land, the developer may pay the municipality “an amount that equals the market value of the land required for park purposes.” (The developer can voluntarily provide more than this – see options under section 4.5.1.2: Density Bonusing.)

It is important to identify critical or desirable areas in the Official Community Plan so that Council and developers know which part of the subdivision is best set aside as park. All too often the 5% represents an undevelopable part of the property, rather than the site with the best ecological or park values.

Where the 'parkland' is taken as a cash value, this money must be placed in a park acquisition fund.

#### **4.6.1.2 Donation of Land**

Private landowners may choose to donate their land to the local government, or a non-governmental agency such as a land trust, to ensure the long-term protection of its natural values. This may qualify for a tax credit (see 4.5.2.3: Ecological Gifts). The donated land is often further protected by a conservation covenant to ensure the donor's wishes are carried out.

*In 2002, the Nature Trust of BC acquired a substantial interest in a 147 hectare parcel of land on Savary Island that contains Western Canada's only intact example of a rare forested dune ecosystem. Acquisition was made possible by a private donation as well as contributions from the Ministry of Water, Land and Air Protection and Environment Canada. (Nature Trust 2002)*

The donation may be an outright gift (with no conditions attached), or a conditional donation (specifying what happens to the land if the conditions are not met). The donor may also retain a Life Estate, specifying that the land will be donated to a conservation organisation or local government, but retaining the right for the landowner (and sometimes the landowner's children) to live out their lives on the land. On their death, title of the land will transfer to the recipient.

*An older couple wanted to donate their land – which included undisturbed Garry oak habitat – as a nature appreciation park. They gave their land to the municipality on two conditions. First, they could remain in their home for as long as they lived. Second, the land was protected by a conservation covenant (held by the Nature Conservancy of Canada) (Cited in Harrington 1999).*

Land may also be donated or returned to the provincial Crown. The Ministry of Water, Land and Air Protection recommends that this mechanism be used to protect streams, wetlands and riparian areas, bird nest trees and other environmentally sensitive lands (MWLAP 2001b).

#### **4.6.1.3 Direct Purchase and Park Acquisition Funds**

Buying land can be expensive. Its value is typically based on an appraisal that values the land at its 'highest and best' use and the existing zoning of the land (often residential) is considered.

Some local governments have created a park acquisition fund that allows them to place funds received from density bonuses, donations, development cost charges, and other sources. This allows them to respond quickly to opportunities to purchase lands for park as they arise.

Municipalities should have a plan in place (for example in the Official Community Plan or in a Park Master Plan) that identifies park acquisition priorities so that competition for the funds does not create conflicts.

*Part of the purchase price for a 16 ha park in the City of Colwood came from a contribution to the municipality's park acquisition fund that had been made by a nearby development (S. Lawrence, pers. comm.).*

Funding for parks acquisition can come from directed property taxes. The CRD's Parks Acquisition Fund is derived from household assessments, and the District of Langford's trail system is being developed through an average annual property tax surcharge. Both these levies were publicly supported by referenda. Other municipalities could hold similar referenda to support parks acquisition.

*In 2000, the CRD Board created a Parks Land Acquisition Fund for the purchase of high priority additions to the regional park system. The fund is based on an annual levy of \$10 per average household assessment over ten years (2000 to 2009). In the first two years of the Fund, CRD Parks expanded regional parkland by 1608 hectares through six purchases (CRD 2002).*

#### **4.6.1.4 Joint Purchase with Another Government or a Non-Government Organisation**

Often, a municipality or a non-governmental organisation may jointly purchase a property with the help of another level of government, and/or a land trust organisation (see also section 4.6.3: Acquisition by Conservation Organisations).

*The District of Saanich has a partnership with The Land Conservancy of BC (TLC) to acquire an addition to Christmas Hill.*

*The District provided an interest free loan to TLC to purchase the property. TLC is raising the funds necessary to repay the loan, and will transfer the land to the District. This means the District will acquire the land for the cost of the interest (The Land Conservancy 2003).*

The Galiano Conservancy Association (GCA), the Islands Trust Fund, and Habitat Acquisition Trust (HAT) initiated the purchase of Laughlin Lake in 1999. HAT's environmental expertise helped to document numerous listed species which resulted in the site being deemed environmentally sensitive which in turn levered funds from the federal government's Georgia Basin Ecosystem Initiative to complete the purchase in 2003.

On occasion, the Province may make Crown land available to municipalities for park purposes. Park lands may also be transferred between agencies to rationalise park management.

#### **4.6.2 Acquisition by Federal or Provincial Government**

Lands may also be purchased directly by the provincial and/or federal governments.

*In June 2001, CRD Parks and Environment Canada purchased 5.8 hectares of land on the east slope of Mill Hill Regional Park. In addition, the owner of the property donated 2.09 hectares to CRD Parks for regional park purposes. The total area acquired was 7.89 hectares (CRD 2001).*

#### **4.6.3 Acquisition by Conservation Organisations**

More than ever before, a variety of conservation organisations are readily available to dispense information, education and expertise on natural features and green spaces. If a community or an organisation determines that a certain property contains ecologically valuable land, the organisation can work with willing municipalities and landowners to protect or acquire that property.

All or part of a property may be purchased by a land trust or other conservation group. Ecologically significant lands can be purchased in partnerships with local governments, businesses or community organisations. Commitments by municipalities towards a portion of the cost can significantly assist non-profit land trusts/community conservation organisations to seek donations and raise funds from the general public and other sources such as private foundations.

The conservation organisation may elect to retain ownership of the property following acquisition, or it may turn land over to a municipality or other agency. The land is usually placed under a conservation covenant to ensure its long-term protection.

*The Nature Conservancy of Canada (NCC) has purchased a 12 ha Garry oak preserve near Duncan. The property was under threat of development but after tremendous community support, \$150,000 was raised by the Elkington/Garry Oak Committee and the Cowichan Community Land Trust Society. The federal and provincial governments and Shell Canada also contributed to the purchase costs. NCC is continuing to raise funds for site restoration and conservation (Nature Conservancy of Canada 2002).*

*The Land Conservancy (TLC) has embarked on a campaign called "Ours Forever" to raise funds to support the acquisition of sites in the Capital Region.<sup>5</sup>*

#### **4.6.4 Acquisition of a Partial Interest in the Land**

Sometimes it is not necessary to acquire the whole parcel of land in order to protect natural values.

##### **4.6.4.1 Easements and Statutory Rights-of-Way**

Trail access or wildlife movement corridors across private land can be secured through the granting of an 'easement' or statutory right-of-way under the *Land Title Act* (section 218). Statutory rights-of-way are granted only to governments, and may be donated or purchased. A right-of-way can be negotiated with property owners even if they are not subdividing their land (with the landowner's consent). An easement or statutory right-of-way may be acquired as park at a later time.

This approach provides a less-expensive alternative to acquisition of an entire property.

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<sup>5</sup> For more information, see <http://www.conservancy.bc.ca/>

#### **4.6.4.2 Profits à Prendre**

A *profit à prendre* is a right to enter land owned by someone else and take something off the land. Although it is not very commonly used, a *profit à prendre* has potential to help preserve natural areas because a landowner wanting to protect the old growth timber on his or her property, for example, could grant a *profit à prendre* to a conservation group with respect to that timber. The conservation organisation would have the exclusive right to decide whether and what trees would be cut or not cut. (Usually the conservation organisation will decide not to cut trees, or only in a selective manner, thus preserving the natural area.)

A *profit à prendre* can last indefinitely. If an owner grants a *profit à prendre* to a conservation organisation and then sells the property, the new owner will still have to abide by the terms of the *profit à prendre*.

#### **4.6.5 Additional Information on Land Acquisition**

##### **Green Space and Growth: Conserving Natural Areas in B.C. Communities**

Calvin Sandborn. 1996. Prepared for the Commission on Resources and Environment, Wildlife Habitat Canada, Fisheries and Oceans Canada and Ministry of Municipal Affairs and Housing.

A research paper that reviews ways to conserve natural areas in urban and rural areas, with suggestions as to how the tools to protect natural areas might be expanded.

##### **Ecological Gifts: Implementing Provisions of the Income Tax Act of Canada**

Compiled by Clayton Rubec and Manjit Kerr-Upal. Updated October 18, 2000. Canadian Wildlife Service, Environment Canada, Ottawa.

A review of the recent changes to the Income Tax Act relating to the donation of environmentally sensitive land, and an outline of the process for certifying ecological gifts, as well as criteria for defining environmentally sensitive lands. For copies contact Environment Canada, [ecogifts@ec.gc.ca](mailto:ecogifts@ec.gc.ca)

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### **Stewardship Options: A Guide for Private Landowners in British Columbia**

Penn, B. 1996. Ministry of Environment, Lands and Parks, British Columbia.

A publication for private landowners who want to protect and maintain wildlife habitat on their property. Part of the Stewardship series of publications. Available on-line at [www.stewardshipcentre.bc.ca/sc\\_bc/stew\\_series/bc\\_stewseries.asp](http://www.stewardshipcentre.bc.ca/sc_bc/stew_series/bc_stewseries.asp)

Conservation contacts for land trusts and other conservation organisations can be found through:

Land Trust Alliance of British Columbia, <http://landtrustalliance.bc.ca>  
Connecting for Conservation, [www.conservationconnection.bc.ca/](http://www.conservationconnection.bc.ca/)

### **4.7 Landowner Actions**

Many individual property owners are interested in protecting natural values on their land. This applies to people who put a hummingbird feeder on their apartment balcony or plant flowers to attract butterflies to backyards, as well as to large lot landowners who protect whole wetlands or forest areas on their property.

The sum of these individual actions can do a great deal to protect the biodiversity of the Capital Region, because so many natural areas have already been lost.

Landowners who wish to conserve the natural values of their property have several options:

- Retain ownership, and manage the land themselves (see 4.7.1: Landowner Stewardship and Naturescaping);
- Retain ownership, but involve others in the conservation and maintenance of the area. This may involve an informal agreement (see 4.7.2.1: Short-term Stewardship Agreements) or a more formal legal option (see 4.7.2.2: Conservation Covenants); or