

**PROTECTING NATURAL PLACES IN
PRINCE EDWARD ISLAND**
OPTIONS FOR THE LANDOWNER



February 2018



Seacow Head Cliffs Natural Area, Fernwood PEI



ISLAND NATURE TRUST

Island Nature Trust is a land trust, incorporated in 1979 to conserve natural ecosystems in PEI. We acquire land through donation and purchase, protect it under legislation that prevents development, and manage it to sustain healthy, robust natural environments.

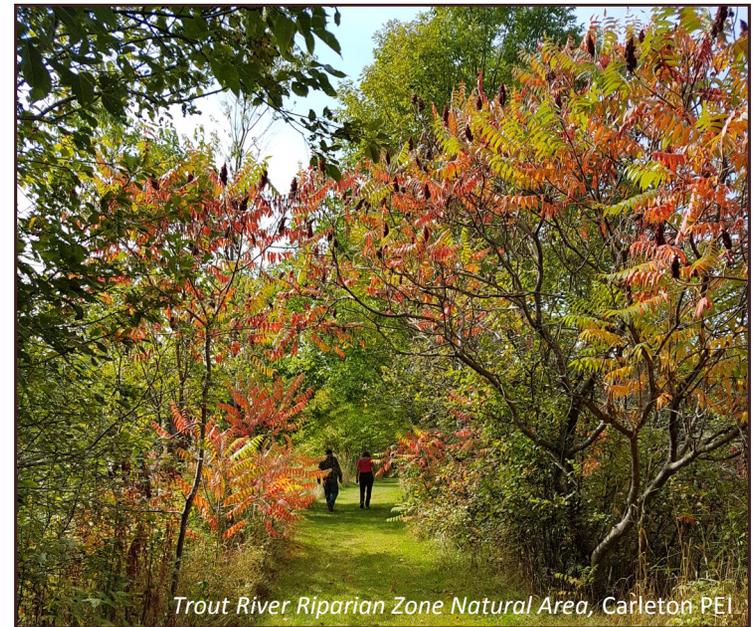
We also assist private landowners who wish to conserve and protect their own land. Several options are available for people who cherish their piece of heaven on the Island and want to ensure it is protected for their lifetime and beyond.

The mixed landscape of woodland, field, stream and shore in Prince Edward Island produces deep attachments in its people.

Their love for a particular place in that landscape often spans generations of one family and can become the glue that holds everyone together in good and bad times.

As our Island changes and responds to global economies, some long to have just one small part of their world stay comfortingly the same.

While it isn't possible to freeze a place in time, it is possible to set aside some of those special natural places and protect them from development, allowing them to change naturally on a geological timeline instead of an accelerated human one.



Trout River Riparian Zone Natural Area, Carleton PEI

This booklet gives you a brief introduction to those options. Staff at Island Nature Trust would be happy to discuss options in greater detail if you wish to find out more.

FINDING THE OPTION THAT SUITS YOU AND YOUR FAMILY

In order to narrow down the options that best encompass your vision for the land, it can be helpful to start with a few key questions. You can find more information about the options listed below in following sections of this booklet.

Do you want to retain ownership of the land?

Yes

You can protect your land with a restrictive covenant, through the *Natural Areas Protection Act* or the *Wildlife Conservation Act*.

You retain title.

No

You can consider transferring ownership to a land trust or the province with the understanding that they protect it with a restrictive covenant and manage accordingly.

If you know that your family does not want to keep the land over the long term, there are several options for transferring ownership and ensuring the land stays protected.

Do you want to enjoy the land for your lifetime and donate it to a land trust when you pass?

- You can leave the land to a land trust in your will.
- You can transfer title to a land trust earlier and retain a life estate interest for yourself.



Do you want to donate the land right away?

- A straight donation to a land trust comes with a charitable tax receipt for the fair market value of the land.
- The land may also qualify as an Ecological Gift, a federal program that provides capital gains tax relief.



Do you want to donate the land but can't afford to?

- A split receipt option allows for a part sale, part donation. The donation portion must be at least 20% of the fair market value and is eligible for a charitable tax receipt from a land trust.
- In instances where the land has very high ecological value, a land trust or the province may consider a purchase.



PROTECTING PRIVATE LAND

THE VALUE OF RESTRICTIVE COVENANTS

If you own land and don't want to give up ownership but do want help to protect it, a restrictive covenant might be your best approach to communicate your vision for the land into the future.

A restrictive covenant is a legal agreement between you, the Province and sometimes a third party like Island Nature Trust. It outlines what activities are allowed and not allowed on the land and provides a management plan to maintain the natural assets of the land over the long term. For the purpose of land conservation on the Island a restrictive covenant can be developed under the *Natural Areas Protection Act* (NAPA) or the *Wildlife Conservation Act* (WCA). NAPA is focused on restricting development for the protection of the land itself and its natural features in perpetuity, whereas WCA is focused on protection of a habitat area for a single species or wildlife group that might be using the land.

The restrictive covenant and the accompanying management plan are written using legal terminology that many find intimidating. The drafters of the documents will work with you ensuring acceptable activities you wish to allow and not allow on your property are clearly defined. You will be afforded as much time as you wish to review and feel comfortable with the documents before signing them. Once the covenant is signed by all parties, it is legally binding. It also follows with the deed and protects the land beyond your lifetime.

If your property has a small area with a cottage or house and contains a larger area of healthy natural woodland, wetland or shoreline, it may be possible to still protect a portion of your land. Developed land areas with buildings, roads or other infrastructure would need to be exempted out of the protected area. The restrictive covenant must be accepted by the legislator, the Province, and so the more intact the natural area is, the more likely it is to proceed without hitches through the designation process.

Once your land is designated under NAPA as a natural area or under WCA as a wildlife area, it is exempted from property taxes. This is in recognition of the services the land provides for the public good in helping to maintain a healthy environment for all Islanders. It may have a lower market value because it cannot be developed. This could be a negative (if you ultimately wish to sell the property) or a positive (if the land is part of your estate and is then subject to lower capital gains tax for your children).



If you wish to consider protecting your land with a restrictive covenant, you are welcome to contact Island Nature Trust or the Province (Forest, Fish and Wildlife Division) to start the discussion

What follows is a brief synopsis of the process involved..

DESIGNATING PRIVATE LAND WITH A RESTRICTIVE COVENANT UNDER THE NATURAL AREAS PROTECTION ACT:

STEP BY STEP WHAT TO EXPECT

Step 1

You contact Island Nature Trust or the Province expressing an interest in protecting your land.

Step 2

Representatives from either or both groups visit your land and assess its ecological makeup.

Step 3

Based on their assessment, they can tell you whether or not the land would qualify as a natural area (under NAPA) or as a wildlife area (under WCA).

Step 4

If it qualifies, the assessors will seek your input to draft restrictive covenant and management plan documents, establishing what activities you wish to allow and not allow. Developed land, buildings, roads or other infrastructure are not allowed and will be exempted out of designated areas. They will draft these documents and revise until you are comfortable with the content.

Step 5

If a candidate for a natural area, the agreed upon draft designation documents will go to a Natural Areas Protection Act Technical Advisory Committee for professional review. Should they suggest changes, these will come back to you for approval.

Step 6

Once everyone has endorsed the wording, the finalized restrictive covenant and management plan will go to Executive Council for approval and designation under the respective Act

Congratulations! You own a natural area!

LEAVING A GIFT OF LAND IN YOUR WILL

Do you love being on your land and worry about what will happen to it once you pass? Leaving a gift of land to a land trust is an incredibly generous act and may also be the best way to ensure it is cared for over the long term in a manner that reflects your values.

If you wish to leave a land bequest to Island Nature Trust, please let us know sooner rather than later. Having advance knowledge allows us to assess the land and ensure we can take on its management needs. It also provides you with the opportunity to communicate your vision for the land so that we can honour your gift by staying true to your vision. Together, we can craft a short statement of intent that outlines how you want the land protected in the future.

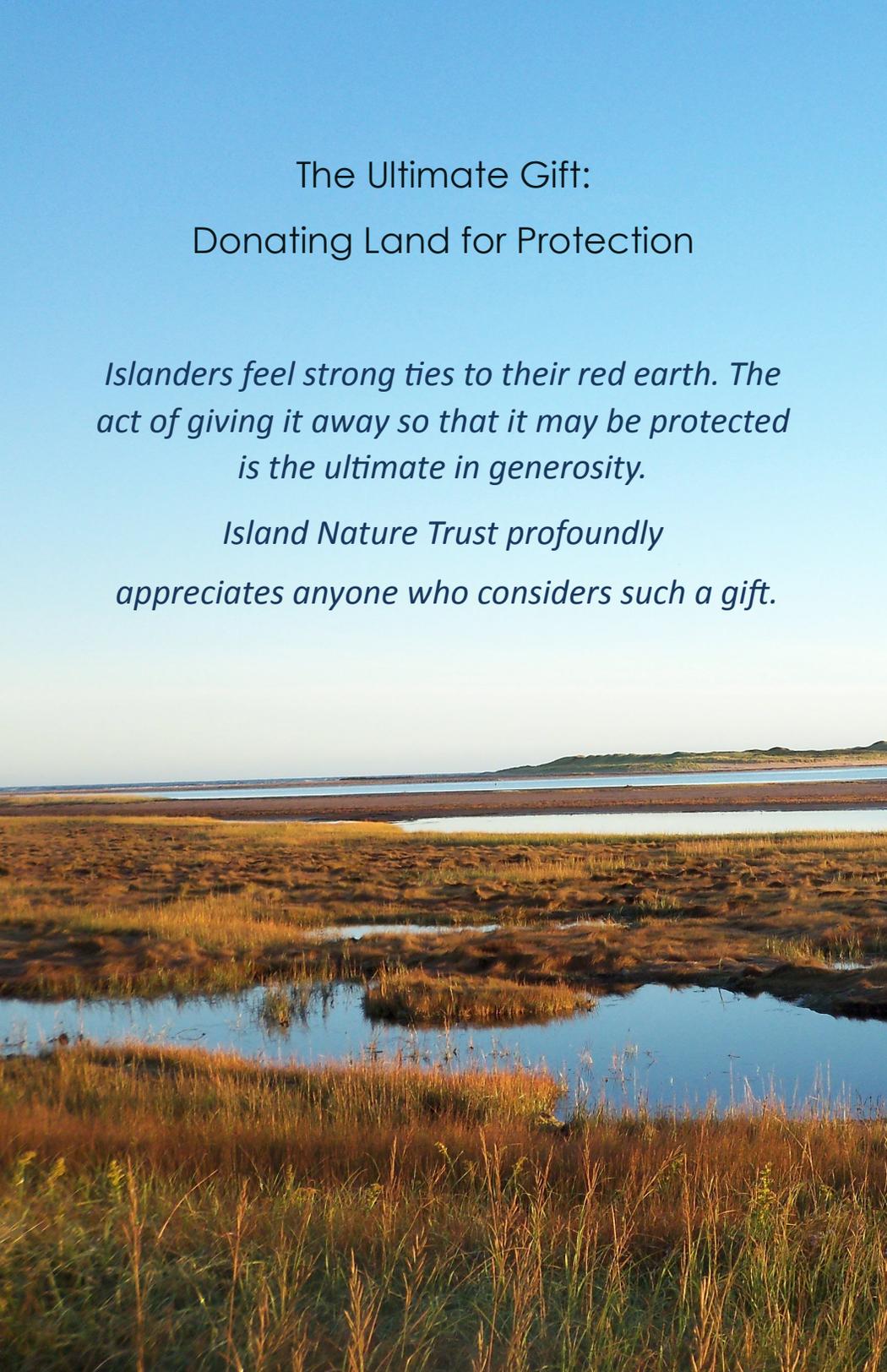


It is always important to consult your own lawyer and accountant extensively when considering a gift of land. Island Nature Trust has a template of wording for a will that your lawyer might find helpful. It is available by contacting the INT office at any time. All gifts of land, even when part of an estate, are subject to capital gains tax and your accountant can help you determine approximately what that amount might be. If the land is ecologically sensitive, it may qualify as an Ecological Gift and that extra designation comes with an exemption from capital gains tax. You can find out more about Ecological Gifts later in this booklet.

If you wish to see the ownership transferred early, for peace of mind and to contribute more meaningfully to a long-term management plan for the land, then you could consider donating the land and retaining a life estate interest. A life estate allows you to occupy and/or use the land as you wish until the end of your lifetime, but title would transfer to Island Nature Trust right away rather than at the time of your passing. If you find it increasingly difficult to manage the land on your own, this option allows you to divest some of those management responsibilities while still continuing to enjoy using the land as you always have.

Gifting land as a bequest also doesn't preclude you from protecting it under legislation beforehand, while you are the owner. That would allow you to benefit from property tax relief during your lifetime.





The Ultimate Gift:
Donating Land for Protection

Islanders feel strong ties to their red earth. The act of giving it away so that it may be protected is the ultimate in generosity.

Island Nature Trust profoundly appreciates anyone who considers such a gift.

While we strongly encourage anyone interested in donating land to speak first with their lawyer, the following description should give you a broad sense of what the donation process looks like.

Island Nature Trust has an internal process for accepting land donations that ensures we follow good standards and practices. When you contact us to offer land, we would first visit the land to assess its natural state. Next, the property would be brought to our Land Acquisition Committee for their recommendation to proceed. The board of directors then ultimately votes on whether to accept the donation.

Given that you have already made the generous offer to donate, Island Nature Trust tries to cover as many of the costs associated with the land donation as possible. We ask you to sign a gift agreement that outlines clearly who is responsible for what. Island Nature Trust pays for the appraisal that establishes the fair market value of the property. We pay for the fees associated with transfer of the deed and title search. If there is a need for a survey and subdivision or establishment of a legal right-of-way, we may ask the donor to share in these costs depending on how extensive they are. You pay for your lawyer and capital gains tax associated with the land transfer. The appraised value of the land is used as the amount for the registered charitable tax receipt, issued to you by Island Nature Trust upon transfer of title.

Some of these steps take time and it is not always possible to respond quickly to an offer of land. Obtaining an appraisal for vacant land, for instance, often takes six months or more. However, taking a bit of extra time in the beginning should ensure that nothing gets missed along the way.

ECOLOGICAL GIFTS:

Providing Federal Support for the Most Ecologically Sensitive Lands



When you've made the significant decision to donate land for protection, it can seem deeply unfair to then be expected to pay capital gains tax on a transaction that hasn't benefitted you financially. That is, unfortunately, how the tax system works in Canada.

If you are donating land that you've owned for a very long time, the capital gains tax could be substantial. However, should the land qualify as an Ecological Gift, it would become exempt from all capital gains tax. Island Nature Trust can help you through the additional paperwork required for this extra designation, which includes documentation of how the land meets the criteria for ecological sensitivity and commissioning of an appraisal from an Ecogift-certified appraiser. Island Nature Trust is a certified grantee and can therefore receive an Ecological Gift.

DONATIONS OF LAND BY AMERICANS

Many American families have long held summer residences in PEI and feel the same strong ties to the landscape as year-round residents. Choosing to donate land for its protection is a superb act of caring, and one for which it is more difficult to provide any small reward in the form of tax relief.

Land donations in the U.S. are not subject to capital gains tax; however, land donations in Canada are subject to Canadian capital gains tax regardless of ownership. In addition, a registered charitable tax receipt from a Canadian registered charity land trust will not be useable for American income tax purposes.

In some instances where the valuation for the land is high enough, it may be possible to work through a third-party such as the American Friends of Canadian Land Trusts to provide some tax relief to American donors. Island Nature Trust can provide further guidance should these circumstances apply.



PURCHASE OF ECOLOGICALLY SIGNIFICANT LAND

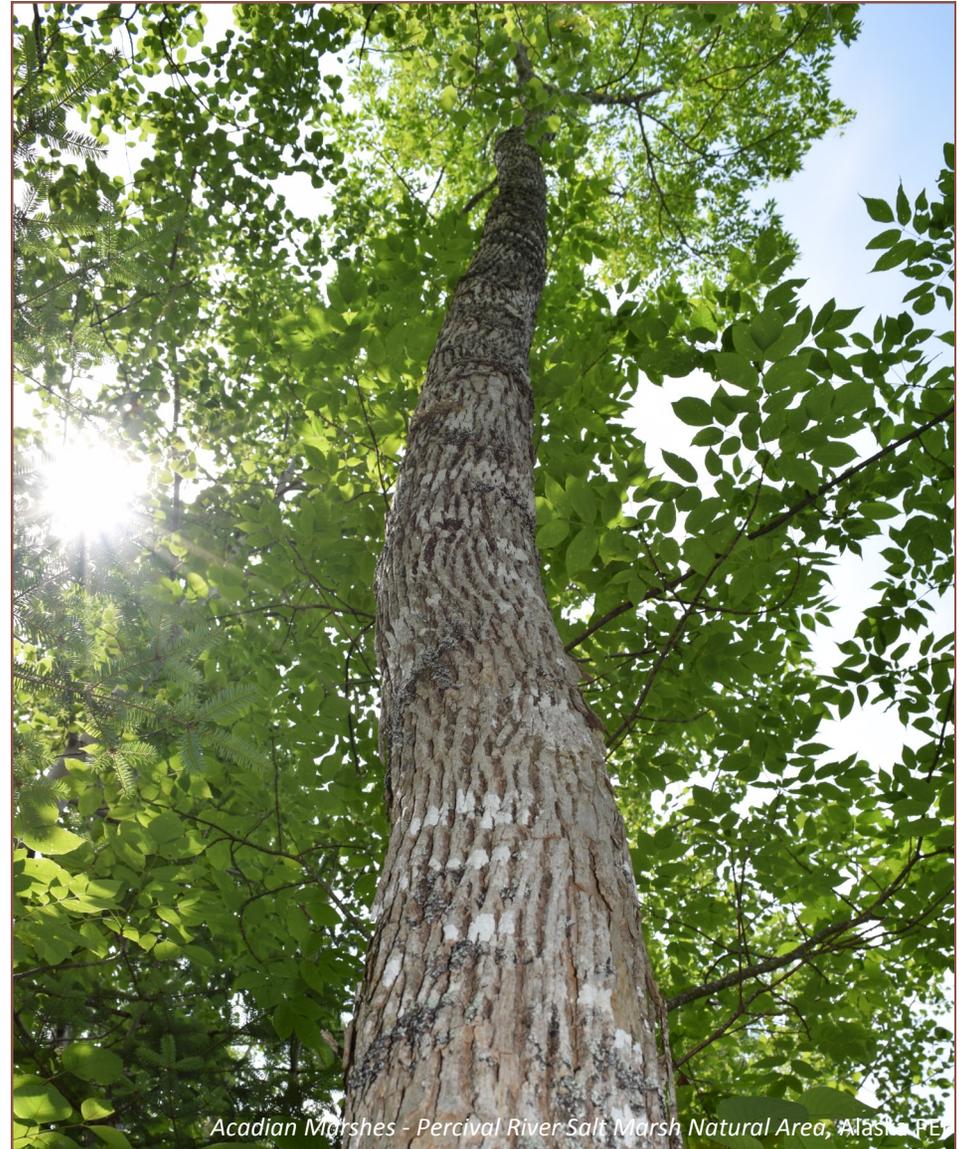
Your circumstances may not allow consideration of a donation of land and in that instance, Island Nature Trust may consider a purchase or a split – receipt.

A split – receipt amounts to a bargain basement sale of land, where a portion of its fair market value is donated, for a charitable tax receipt. Canada Revenue Agency will allow a donation of 20 % or more of the fair market value. The remainder portion would be the purchase price. A split – receipt can also be an Ecogift, meaning that the donated portion would also be exempt from capital gains tax. Your accountant can provide you with more detail on the benefits to you of choosing this option. Depending on your other income, the benefits associated with the tax receipt may outweigh the benefits of a higher purchase price.



Acadian Marshes - Percival River Salt Marsh Natural Area, Alaska PEI

In rare circumstances, Island Nature Trust will consider purchasing a property of high ecological value. In those instances, the expectation would be that additional costs associated with surveys or rights-of-way would be the responsibility of the seller. Island Nature Trust may also ask to pay the purchase price in installments over two or three years.



Acadian Marshes - Percival River Salt Marsh Natural Area, Alaska PEI

WHO PROTECTS LAND IN PRINCE EDWARD ISLAND?

NAPA = PEI Natural Areas Protection Act, applied to natural areas to protect land in perpetuity; Ducks Unlimited uses another protection / covenant process, national in scope and specific to waterfowl habitat

Name	Date Established	Organization Structure	Geographic Scope	Priorities
Island Nature Trust	1979	Registered charity, non-profit, non-government, incorporated, volunteer board of directors	All of PEI	Conservation of ecologically sensitive land, protection from development for 7% of PEI land mass representative of the suite of natural ecosystems present on the Island; use <i>NAPA</i>
LM Montgomery Land Trust	1994	Charitable non-profit, incorporated, volunteer board of directors	Seaview to Caven-dish, PEI	Preservation of agricultural land and coastal view-scapes intrinsic to the landscape made famous in Anne of Green Gables books
Nature Conservancy of Canada	1962 (Canada) – US arm	Non-profit, non-government, corporate structure (CEO, etc)	National / International	Conservation of natural ecosystems in focal areas (on Island focus is offshore islands, coastal habitats); use <i>NAPA</i>
Ducks Unlimited	1938 (Canada)	Registered charity, non-government, corporate structure	National / International	Conservation of waterfowl habitat; creation of new wetlands, restoration of existing wetlands
PEI Wildlife Federation	1930s	Registered charity, non-government, national affiliate	PEI (Kings & Queens County chapters active)	Conservation of wildlife and wildlife habitat; very occasionally own land; use <i>NAPA</i>
Province of PEI	-	Provincial government	PEI	Protection from development for 7% of PEI land mass representative of the suite of natural ecosystems present on the Island; use <i>NAPA</i>
Parks Canada	-	Federal government agency	National	“Protect and present” nationally significant examples of natural & cultural heritage; north shore parks on PEI