

How to **PROTECT PARADISE**

Ontario Nature has been at the forefront of a province-wide land trust movement, giving property owners the chance to protect their piece of wilderness forever

Eric Eberhardt's land is like a great, green ark adrift in southwestern Ontario's agricultural heartland – a profusion of maples, ashes and pines borne on a rustling tide of cornfields and soybeans. "I think of it as an oasis for wildlife," says Eberhardt, who plans to keep the 40-hectare refuge outside of Stratford pretty much the way it is – safe from big-box stores, gravel pits and sprawling barns filled with hogs.

Keeping a property as it is might be wishful thinking for most people, but Eberhardt and his wife, Marsha, played a trump card few Canadians know is in the deck. Together with the Thames Talbot Land Trust (TTLT) they hold a conservation easement on their property, a legal agreement that requires future owners to protect the environmental value of the land. Generations may ebb and flow as the land is sold or passed on to heirs, but if the easement holds true the tract will never be developed.

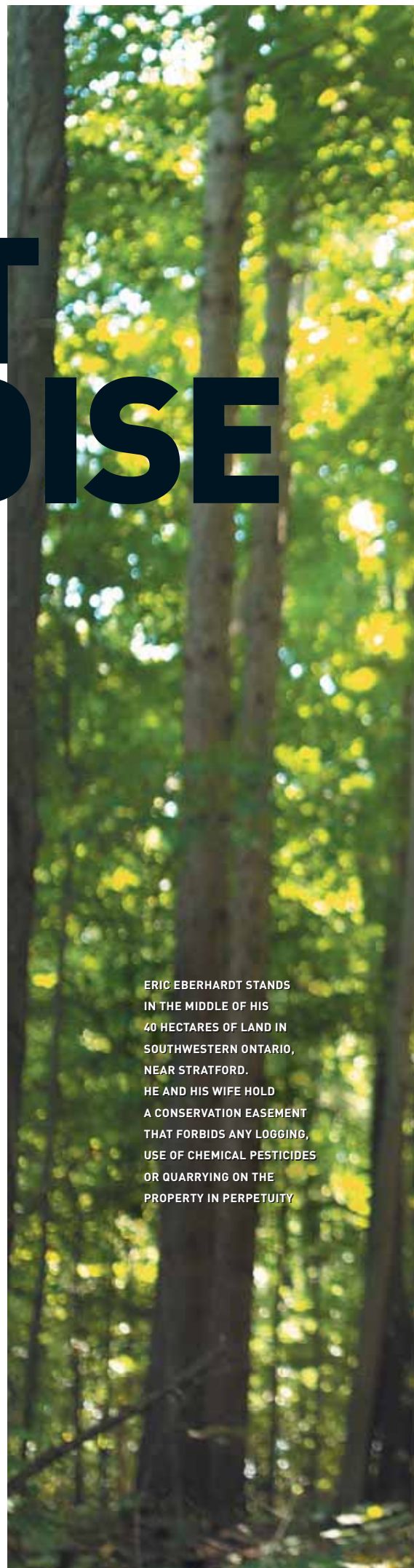
by **Ray Ford**

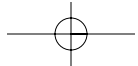
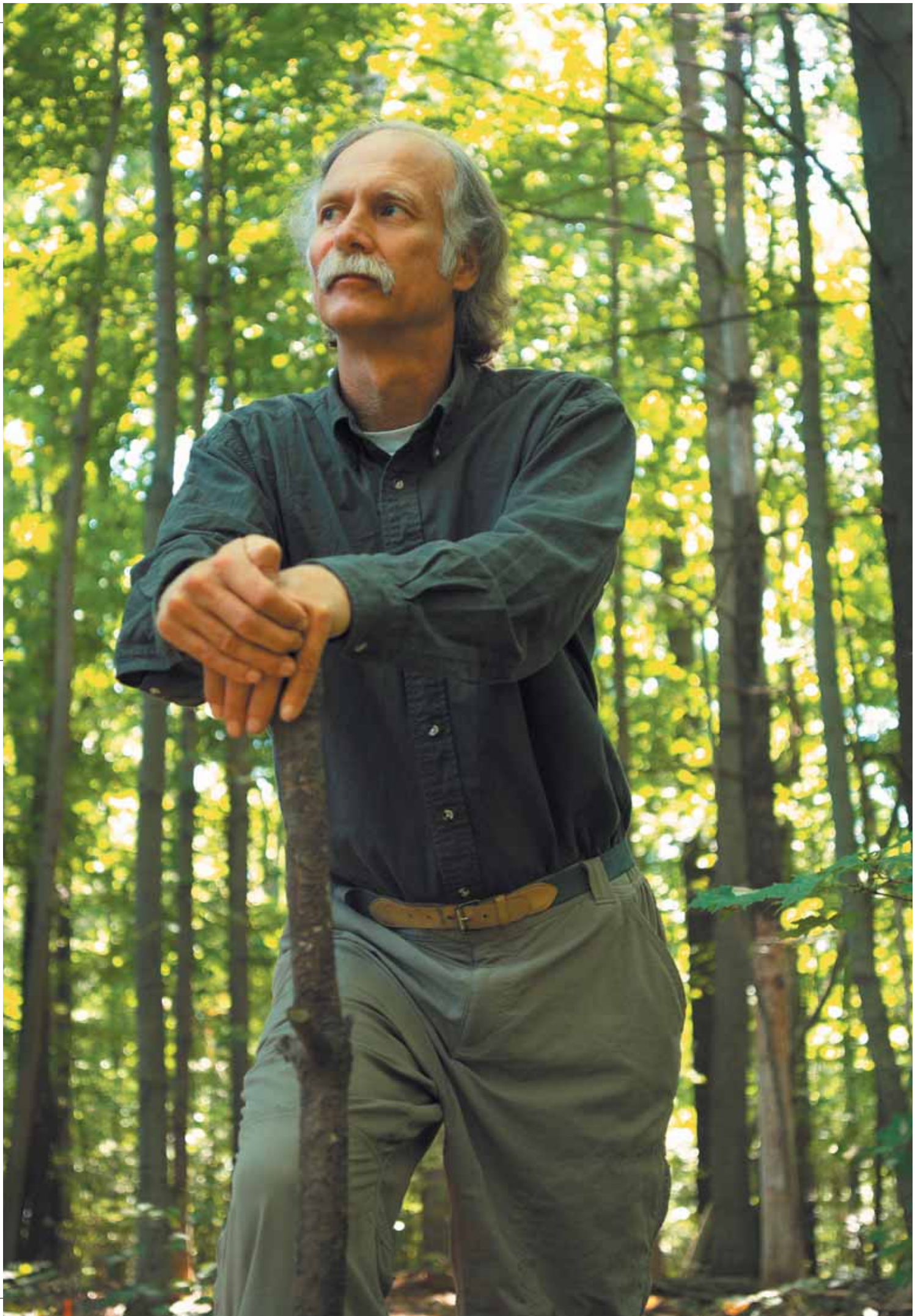
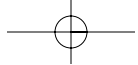
Easements are part of a do-it-yourself conservation movement, a tool that tempers urban sprawl. First permitted in Ontario by a 1995 amendment to the Conservation Land Act, easements (also known as conservation agreements or covenants) now cover almost 16,000 hectares of land in Ontario – a 53 percent increase over the land held under easement in 2004. Then again, maybe the draw of a conservation easement is not that surprising: how many people have ever seen a strip plaza that is as lovely as a woodlot?

The popularity of easements goes hand in hand with the growth of the land trust movement, a development that Ontario Nature ►

PHOTOGRAPHY BY NADIA MOLINARI

ERIC EBERHARDT STANDS IN THE MIDDLE OF HIS 40 HECTARES OF LAND IN SOUTHWESTERN ONTARIO, NEAR STRATFORD. HE AND HIS WIFE HOLD A CONSERVATION EASEMENT THAT FORBIDS ANY LOGGING, USE OF CHEMICAL PESTICIDES OR QUARRYING ON THE PROPERTY IN PERPETUITY





has fostered. Land trusts are nongovernmental charitable organizations that own property or hold easements to preserve the environmental, agricultural, social or cultural benefits a property provides. Ontario Nature is a major player in the movement, operating the most extensive system of private nature reserves in the province. Through direct ownership and easements, Ontario Nature safeguards nearly 2,000 hectares in places as diverse as Pelee Island's Stone Road Alvar and the Hay Marsh on the shore of St. Joseph Island.

Whether they are protecting rolling farmlands, the granite-bejewelled archipelago of Georgian Bay or the limestone spine of the Niagara Escarpment, private conservation arrangements are booming in part because the province no longer has endless vistas to squander. The boom is also a sign that the need for land conservation may be too urgent to be left to politicians.

"The spread of the land trust movement in some ways is thanks to [former Ontario Premier] Mike Harris," says Couchiching Conservancy executive director Ron Reid. "The government has vacated the field to a large extent, and the focus has shifted from government to the nongovernmental sector."

BACK IN THE DAY

The early 1960s were heady days for development, and it was during this era of new superhighways and sprawling split-level ranch homes that Ontario Nature (then called Federation of Ontario Naturalists) and its member clubs pioneered pay-as-you-go land conservation, purchasing environmentally significant areas to protect key habitat. "There weren't as many players back then, and we got in almost out of necessity," says Ontario Nature stewardship coordinator April Mathes.

In 1961, the Hamilton Naturalists' Club anted up \$4,500 for the first privately held nature reserve in Ontario, Spooky Hollow near Turkey Point on Lake Erie. Ontario Nature followed suit and assembled its own system of nature reserves, including the 1962 purchase of near-pristine shoreline on the Bruce Peninsula's Dorcas Bay – a move that encouraged the development of what is now Bruce Peninsula National Park.

But Ontario Nature's support for community land conservation extends far beyond the tracts it protects. The organization's volunteer Nature Reserves Committee, first assembled in the sixties, became the launching pad for the Nature Conser-

A GUIDE TO LAND TRUSTS

So you want to be a donor

To determine whether your property may qualify for an easement or donation, have a look at Environment Canada's Ecological Gifts Program (EGP). It has a broad definition of ecologically sensitive lands, including habitats of endangered, threatened or vulnerable species, provincially significant wetlands, areas near other parks or conservation reserves, and land zoned for environmental protection. To see the full definition, order or download a copy of the 2005 Ontario Ecogifts Handbook on the Environment Canada website (www.on.ec.gc.ca/ecogifts)

or talk to your local land trust. Contacts for land trusts are available through the Ontario Land Trust Alliance website (www.ontariolandtrustalliance.org).

A trusting relationship

The EGP process is one that many land donors prefer to use. Under the EGP, the value of a property is used to generate a nonrefundable tax credit that the donor can claim in the donation year. If the donor does not claim the entire credit that year, he or she can claim the remainder in the five subsequent years. Capital gains on the gift are taxed at 25 percent, rather than the 50 percent tax rate in effect for land donations outside the program.

To get those breaks, you will have to jump

through several hoops, including a review process to ensure that the property is ecologically sensitive, and a certification to confirm the property appraisal. Because of its benefits, the EGP is suitable for most donors, although some low-income donors of valuable properties may not realize a significant advantage. Since 1995, the EGP has handled 168 donations in Ontario, worth about \$45 million. About half the gifts go to the Nature Conservancy of Canada, another quarter to conservation authorities, and most of the rest go to community land trusts, Ontario Nature or Ducks Unlimited.

Weigh the options

These are some common land transactions:

- Fee-simple donation: You donate the land to the trust and receive a tax-deductible receipt.
- Conservation easement: You agree to restrict uses of the land to maintain its ecological value, but you keep the right to hold the land, sell it or bequeath it to your heirs. The restrictions remain in effect for future owners. In exchange for a conservation easement, you receive a tax receipt for the difference between the appraised fair market value before the easement came into effect and the value with the easement in place.

Other, less common options include selling all or part of the land to a trust, or retaining a life interest that allows you to use the property

until your death. Even if you opt not to donate your land (or your donation is not accepted), you can participate in a voluntary stewardship program and promote the ecological integrity of your property.

Seek advice

Donors should seek independent legal and financial advice. At the very least, you will need the services of a lawyer. Under the EGP, appraisals are also subject to a review, and if donors are not happy with the appraisal result, they can ask for a reassessment.

Finally, talk to someone who has already been through the process, preferably with the same land trust.

The commitment

Donations and easements are held "in perpetuity," often stated for legal reasons as a term of 999 years. The great fear of donors is that their land will not be cared for in accordance with their wishes. The trust system and the EGP program have safeguards to prevent this, including these:

- If the trust ceases operating, its holdings will pass to another similar charity.
- Under the EGP, the Canada Revenue Agency can apply a punitive tax (equivalent to half the fair market value of the property) if an unauthorized sale or change in the use of the land occurs. — RAY FORD





vancy of Canada, now the nation's largest land trust. Since 1962, the conservancy has acquired or received easements on more than 720,000 hectares.

More recently, Ontario Nature backed the formation of the Ontario Nature Trust Alliance, an umbrella group for like-minded conservation groups. In 2002, the alliance incorporated itself as the Ontario Land Trust Alliance, expanding its efforts to support and develop trusts and help people like the Eberhardts protect their land.

The result has been a land trust boom. Currently 33 community land trusts operate in Ontario – up from just a few 15 years ago. Altogether the trusts safeguard more than 26,400 hectares on almost 500 properties. Volunteers are the backbone of the movement.

"I'm blown away by the time and energy people are willing to put in to care for these properties. They dote on them. It's in their own backyard, in their own community, and they can invest and care for it," Mathes says.

"That's a really positive step. Owning and managing land is expensive, and it's hard for a land trust to be sustainable. If we can convince people to manage their own properties, we can achieve those environmental goals. Maybe you can't buy 1,000 acres, but you can buy 100 and convince the neighbours to help manage their property with those ideas in mind."

HOW DOES IT WORK?

"An important point of an easement," says Paul Peterson, a lawyer and vice-president of the Northumberland Land Trust, "is to take [habitat] out of political control and allow organizations and landowners to determine for themselves what the future of the land will be."

A conservation easement is a contract between two parties, usually a landowner and a conservation organization. The landowner agrees to use the land in a way that will maintain its environmental value, while the trust acts to ensure that the landowner holds up her or his end of the deal. A typical easement might work like this: the owner of 40 hectares with a market value of \$300,000 agrees with a local land trust to maintain the forest cover and wetlands on the property and to sell it or pass it on intact rather than subdividing it. The trust has the right of access to inspect the property and enforce the deal. The two parties sign on the dotted line, and the new value of the property is appraised.

The appraiser assumes that the owner has forfeited potential



LEFT TO RIGHT: THE EBERHARDT'S ENERGY-EFFICIENT HOME SURROUNDED BY MAPLES, ASHES AND PINE; LOOKOUT ISLAND IN GEORGIAN BAY WAS DONATED TO THE GEORGIAN BAY LAND TRUST; LORNE AND RHODA ALMACK PUT AN EASEMENT ON THEIR 34-HECTARE FARM THAT PERMITS SELECTED CUTTING AS LONG AS 80 PERCENT OF THE FOREST CANOPY IS MAINTAINED



income from commercial logging and development interests, and assesses the value of the tract at half its original worth. In exchange for forgoing that potential payoff, the owner receives a \$150,000 tax receipt from the trust and could also receive a break on property

taxes. (Be forewarned, though. Peterson says assessment authorities have been reluctant to support across-the-board property tax cuts for easement holders. Breaks have come "as a result of case-by-case battles.")

Equally important, the easement satisfies that peculiarly human need to leave a legacy. Former Ontario Nature president Lorne Almack opted for a conservation easement on his 34-hectare property near Clarendon, Ontario, "because I don't want someone to screw up my life's work.

I've spent a lot of time planting trees and keeping the creek clean, and I want to ensure it stays that way."

Easements are so popular that some conservation organizations have difficulty meeting the demand for them. This may come as a surprise to donors, but an easement or donation of land incurs substantial costs to the recipient, including costs for surveys, land registration and legal bills. "We have more landowners lined up to give us easements and donate than we can handle," Peterson says. "Every landowner believes their property is uniquely wonderful, but conservation organizations have an objective to use their limited time and financial resources wisely, and they have to have priorities."

THE REWARD SYSTEM

For landowners whose property does have significant environmental value, the major sweeteners are the tax credits and reduced capital gains taxes offered under the federal Ecological Gifts Program (EGP). For high-value donations, the payoff can be a sharp reduction, or in some cases, elimination of income tax for up to six years. (See "A guide to land trusts," opposite page) About 70 percent of straight (or "fee-simple") land donations and up to 90 percent of conservation easements go through the program.

While tax breaks are nice, donating land or taking out an easement is definitely not a get-rich-quick scheme. First off, it's not quick. Lawyers are involved, along with financial planners, appraisers, surveyors and a government review process to ensure that the land is ecologically sensitive.

Nor is the process an exercise in wealth creation (except, maybe, for lawyers, financial planners and appraisers). The EGP does offer an incentive to do the right (Continued on page 43) ►

(Continued from page 31) thing, but “the predominant reason to donate is people want to protect the natural environment, protect their land and make a statement,” says Graham Bryan, former habitat biologist with the program. “If you’re just interested in financial returns, you might as well sell the land.”

The financial payback was not a big concern for Eberhardt. He inherited the property from a friend, Hamitage Richardson, and felt bound by Richardson’s wishes. “He left the property to us, but he put a sort of verbal easement on it at the time. He wanted the forest to continue, and he didn’t want any more land brought back into agriculture.”

Eberhardt worked with the TTLT to turn Richardson’s verbal easement into a legally binding one. “What we’ve done is put in place the same sort of restrictions you’d see in a national park.” That means no commercial logging, no chemical pesticides, no quarries. In one section that was reforested during the 1920s, no cutting takes place at all, and only trail maintenance is allowed. “Even the people who agreed with this easement wondered why we did that,” he admits. “But can’t there be eight acres somewhere in southwestern Ontario that people aren’t trying to manage?”

Almack also took a mixed-use approach with his 34-hectare farm. His easement with Ontario Nature sets about 11 hectares aside for farming and another four hectares for a house, barn and outbuildings. The remainder is to be left forested. The easement permits selected cutting, as long as the owner maintains 80 percent of the forest canopy.

“I am so opposed to urban sprawl, I thought I should put my money where my mouth is,” Almack says, adding that the tax receipt from his easement was \$293,000 – or about 30 percent of the value of his farm before the easement restrictions were put in place.

Despite all the benefits of an easement, the major unknown is what it will do to the resale value of a property. For his part, Eberhardt is not worried. “We were quite comfortable in terms of placing strenuous constraints on the property. If you’re interested in the property, you’re probably in sync with the vision. What we’re saying is, it’s your turn to maintain this legacy.”

“I don’t think I’ll ever have a problem selling the property,” says Almack. “There are people who will want to live here, and appreciate it for what it is.”

Easements do not work for everyone. They tend to be less successful for lands that offer extensive public access. The constant influx of nature photographers, hikers or birders can trigger conflicts with the owners.

And because owners still pay property taxes under an easement, it will not help an owner burdened with a sky-high assessment. That was the problem Georgian Bay cottager Margaret Catto faced. Along with her nephews, she owned eight hectares of lovely pink granite, white pines and water lilies on Lookout Island near Pointe au Baril – land that had been in the family for decades and home to the Blanding’s turtle and the massasauga rattlesnake.

“Once market value assessment came in, the tax on vacant land became almost prohibitive,” Catto says. “We certainly didn’t want to sell any of it, but it might have come to the point where we might have had to.”

Looking for an alternative to development, Catto and her nephews opted for a straight donation, handing the tract over to the Georgian Bay Land Trust (GBLT). “This is the perfect situation for us,” she says. “We can still use the property for picnics, and so can the rest of the community. We wanted the lands undeveloped and left in their natural state, and this way we’ll have access to them forever.”

Land trusts, easements and donations harness the power of individuals like Catto, Almack and Eberhardt to protect a precious resource.

“In Canada I think we took for granted we have a lot of open space, and we didn’t have to worry about it,” says Wendy Cooper executive director of the GBLT. “That view is starting to change, and people are realizing how precious these spaces really are.”

In the meantime, the trusts continue their quiet work, a hectare here, a few hectares there, each parcel a small, precious gift to the future. “Everything and anything in this part of the country is either gobbled up by agriculture or urban expansion,” Eberhardt says. “If we’re going to make any impact on that, easements are part of the solution.”

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Ray Ford is a freelance writer based near Powassan, Ontario. His article “9,500 holes and counting” (*ON Nature*, Autumn 2004) received honourable mention at the 2005 National Magazine Awards.