



# THE CANADIAN ECOLOGICAL GIFTS PROGRAM Handbook

*A legacy for tomorrow—  
a tax break today*





THE CANADIAN  
ECOLOGICAL  
GIFTS PROGRAM  
Handbook

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a tax break today*

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# INTRODUCTION

## About this handbook

*The Canadian Ecological Gifts Program Handbook* is intended for use by donors, recipients and others interested in the Ecological Gifts Program (EGP). The handbook describes the general requirements and responsibilities of both donors and recipients, as well as the steps involved in successfully making an ecological gift donation—from arranging the donation to determining its fair market value. A glossary of terms and additional resources are found in the appendices. This edition of the handbook updates and replaces all previous editions.

## Contacts for more information

For personal assistance, or to request printed copies of EGP publications, please contact the program's National Secretariat at 1-800-668-6767 or by email ([pde-egp@ec.gc.ca](mailto:pde-egp@ec.gc.ca)). Environment Canada regional offices can also provide assistance at the general numbers listed below. Contact information for all EGP regional coordinators is provided on the EGP website ([www.ec.gc.ca/pde-egp](http://www.ec.gc.ca/pde-egp)).

- **British Columbia/Yukon: 1-604-940-4700**
- **Northwest Territories/Nunavut: 1-867-669-4760**
- **Alberta: 1-780-951-8826**
- **Saskatchewan: 1-306-780-5322**
- **Manitoba: 1-204-984-0863**
- **Ontario: 1-416-739-5828/4286**
- **Quebec: 1-418-649-6136**
- **Atlantic provinces: 1-506-364-5044**
- **Newfoundland and Labrador: 1-709-772-7456**

For more information on the *Income Tax Act of Canada* or the *Quebec Taxation Act*, donors should consult their professional tax and legal advisors. Donors may also wish to visit the Canada Revenue Agency (CRA) website ([www.cra-arc.gc.ca](http://www.cra-arc.gc.ca)) or contact the CRA directly at 1-800-267-6999 (the CRA hotline for registered charities is 1-800-267-2384) for more information. The Quebec Ministry of Revenue can be reached at 1-800-267-6299 or online ([www.revenu.gouv.qc.ca](http://www.revenu.gouv.qc.ca)).

## Publications

Visit the EGP website ([www.ec.gc.ca/pde-egp](http://www.ec.gc.ca/pde-egp)) for more information and to access online copies of this handbook and other EGP publications, including:

- *Confirmation that Ecogifts are Eligible for Split-Receipting;*
- *Disposition or Change in Use of Ecological Gifts – What Recipients Need to Know;*
- *Donation and Income Tax Scenarios;*
- *Ecological Gifts Program Guidelines for Appraisals;*
- *Engaging an Appraiser to Appraise an Ecological Gift;* and
- *Retaining the Right to Use Land Donated as an Ecological Gift.*

Additional publications and resources are listed in Appendix C.

## About the Ecological Gifts Program (EGP)

Habitat loss and degradation are the greatest threats to biodiversity in Canada today. Many key habitats—from marshes to grasslands—are found on private property and therefore landowners play a vital role in their conservation.

Canada's Ecological Gifts Program (EGP) provides a way for Canadians who own ecologically sensitive land to protect nature and leave a legacy for future generations. Made possible by the provisions of the *Income Tax Act* of Canada, the program offers significant tax benefits to landowners who donate land, or an eligible interest or right in land, to a qualified recipient. Outside the Province of Quebec, eligible interests in land are constituted of covenants or conservation easements and can be donated to the program. The eligible right in land considered by the EGP for a donation in the Province of Quebec is a real servitude. Recipients ensure that the land's biodiversity and environmental heritage are conserved in perpetuity.

The EGP is administered by Environment Canada in cooperation with numerous partners, including other federal departments, provincial and municipal governments, and environmental non-government organizations. As a result of this collaborative approach and a dedication to improving the program on an ongoing basis, the EGP continues to provide a means of securing private land for conservation every year.

Since its inception in 1995, hundreds of Canadians have made ecological gifts valued at a total of more than \$550 million. Many of these ecological gifts contain habitats designated as having national, provincial or regional importance, and many include rare or threatened habitats that are home to species at risk.

Ecological gifts and the motivations behind them are as varied as the Canadian landscape. They range from corporations in British Columbia donating covenants over woodlands to local citizens pulling together to conserve treasured coastal habitat in Atlantic Canada. The motivation for many individual donors is the comfort of knowing that their cherished piece of nature will be cared for and protected into the future.

### What is an ecological gift?

An ecological gift is a donation of ecologically sensitive land, or an eligible interest or right in land, to a qualified recipient, that has been certified by the federal Minister of the Environment or a delegated certification authority according to specific national and provincial criteria (see page 8 for ecological sensitivity criteria).

For donors to be eligible to claim ecological gift income tax benefits, the federal Minister of the Environment must first:

- certify the property as ecologically sensitive;
- confirm that the ecological gift is made to an eligible recipient; and
- certify the fair market value of the donated property.





## Income tax benefits

Many people who make a donation through the EGP do so for non-financial reasons. As an incentive to conserve ecologically sensitive land and to assist those who could not otherwise afford to donate, however, the *Income Tax Act* of Canada provides significant income tax benefits through the program, for donations of ecologically sensitive land or an eligible interest or right in land such as a conservation easement, covenant or real servitude, to a qualified recipient.

Both individuals and corporations can make ecological gift donations. The value of the ecological gift is used to determine the eligible amount of a gift for purposes of a non-refundable tax credit available to individuals, or a deduction from the taxable income available to corporations. As with other charitable gifts, ecological gifts may be claimed in the year of the donation and any amount not claimed in that year may be carried forward for up to five years.

The resulting tax benefits include the following:

- For individuals, a tax credit at the rate of 15% is applied to the first \$200 of the donor's total gifts for the year and 29% is applied to the balance. In most provinces, a reduction in federal tax payable will also reduce provincial tax (note that rates are current as of 2010).
- A reduction in the taxable capital gain realized on the disposition of the property. Generally, donors who dispose of capital property, such as land, will realize a capital gain—a portion of which is taxable—where the proceeds of disposition exceed the property's adjusted cost base (usually the original purchase price of the land). This capital gain is generally the amount by which capital property appreciates in value while it is in the owner's possession. For most gifts the taxable portion is 50% of the capital gain, whereas, for an ecological gift, none of the capital gain is taxable.
- Unlike other charitable gifts, there is no limit to the total value of the ecological gifts eligible for the deduction or credit in a given year.

To receive these tax benefits, donors must include the following documents with their federal income tax returns:

1. *Certificate of Ecologically Sensitive Land, Recipient Identification, and Registered Charity Approval Pursuant to the Income Tax Act of Canada* (or, in Quebec, a *Visa pour dons de terrains ou de servitudes ayant une valeur écologique*);
2. a *Statement of Fair Market Value of an Ecological Gift Pursuant to the Income Tax Act of Canada* in support of the gifted property; and
3. an official donation receipt from the recipient.

### Additional information

More detailed information on the tax benefits of the Ecological Gifts Program can be found in the publication *Donation and Income Tax Scenarios*, available on the EGP website ([www.ec.gc.ca/pde-egp](http://www.ec.gc.ca/pde-egp)) by clicking on "Publications" and following the links. Please note that this handbook and the tax scenarios publication are provided for general information only. Since the tax implications of any donation are dependent on the details of individual or corporate financial situations, all donors are strongly advised to obtain independent professional tax and legal advice when considering donating an ecological gift.

### Other incentives to donate through EGP:

- the value of the donated property can be determined by the Minister of the Environment *before* the decision to proceed with the gift is made. However, it is important to note that the value determined by the Minister of the Environment will apply to the subject property for a two-year period for all income tax purposes involving any charitable gift of that subject property; and
- the protection and preservation of the donated property in perpetuity.



These requirements are further explained in the Ecological Gifts "Program process" section of this handbook (page 15).

In addition, applications for past donations can be considered by the Minister of the Environment as ecological gifts and receive the typical income tax benefits, provided that the *Application for Appraisal Review and Determination of the Fair Market Value of an Ecological Gift* is received by Environment Canada within three years of the end of the person's taxation year in which the donation occurred.

## Split-receipting

Split-receipting is the method used for calculating the eligible amount of a gift for receipting purposes when the donor has received an advantage (consideration) in return for the donation.

Finance Canada introduced proposed amendments to the *Income Tax Act* of Canada that include provisions to facilitate split-receipting. Although the proposed amendments were not yet enacted at the time of publication, the Canada Revenue Agency (CRA) has provided a number of interpretational guidelines that should assist donors and recipients. The guidelines are available on the CRA website at [www.cra-arc.gc.ca/E/pub/tp/itnews-26/README.html](http://www.cra-arc.gc.ca/E/pub/tp/itnews-26/README.html). Potential donors should rely on these guidelines even though the proposed amendments have not yet become law.

In instances where split-receipting rules apply, the proposed provisions enable the donor to claim the “eligible amount” of a gift, which is equal to the fair market value of the donated property, minus the value of any advantage (consideration) received by the donor, or a person not dealing at arm’s length with the donor, in respect of the gift.

Under the proposed amendments and guidelines, split-receipting is allowed in the context of an ecological gift where:

- the transfer of land or partial interest or right in land is made with donative intent;
- the land transferred has an ascertainable value;
- the recipient is eligible to receive the ecological gift; and
- any advantage received or obtained by the donor is identified and its value is ascertainable.

### Related CRA information:

- *Gifts and Income Tax* ([www.cra-arc.gc.ca/E/pub/tg/p113](http://www.cra-arc.gc.ca/E/pub/tg/p113))
- *Issuing Receipts* ([www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/rcpts/menu-eng.html](http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/rcpts/menu-eng.html))
- *Income Tax Technical News No. 26 – Proposed Guidelines on Split-Receipting* ([www.cra-arc.gc.ca/E/pub/tp/itnews-26/itnews-26-e.pdf](http://www.cra-arc.gc.ca/E/pub/tp/itnews-26/itnews-26-e.pdf))

Pursuant to these provisions, a donor is generally presumed to have intended to make a gift in circumstances where the value of the advantage to the donor in respect of the gift does not exceed 80% of the fair market value of the transferred property. Only in exceptional circumstances, where the value of the advantage to the donor exceeds 80% of the fair market value of the transferred property, a gift may be recognized if the donor can satisfy the federal Minister of National Revenue that the transfer was made with the intention to make a gift.

In a split-receipting situation, the fair market value of the donated property determined by the Minister of the Environment is reported on the official donation receipt issued by the recipient of the donated property, along with the description and the amount of any advantage in respect of the gift, and the resulting “eligible amount” of the gift. The donor will be entitled to claim this “eligible amount” in the calculation of the donation tax credit available to an individual, or as a deduction from taxable income available to a corporation. If there are questions about official donation receipts, donors and recipients should consult with an independent professional tax and legal advisor.

Please refer to the EGP publication *Confirmation that Ecogifts are Eligible for Split-Receipting* for more information.



# DONORS

## What constitutes a gift?

Any individual or corporate landowner may donate land, or an eligible interest or right in land, such as a conservation easement, covenant or real servitude, through the EGP. Ecological gifts are made in perpetuity. The donor may only qualify for the exemption from capital gains tax on the disposition of ecological property if the donation is of capital property to the donor. The donor and the recipient should obtain independent verification that the transfer of land or other eligible interest or right in land qualifies as a gift for the purposes of the *Income Tax Act* of Canada, as the federal Minister of the Environment does not carry out this assessment.

In order for an official donation receipt to be issued by the recipient, the donation must qualify as a gift under Canadian tax law. The Canada Revenue Agency (CRA) provides guidance on what it considers to be a gift for tax purposes on its website ([www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/rcpts/menu-eng.html](http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/rcpts/menu-eng.html)). If there are questions about whether a proposed ecological gift qualifies as a gift for tax purposes, donors and recipients could request an advanced tax ruling from the Canada Revenue Agency.

## What lands qualify as ecologically sensitive?

This is a common question, and if after reading this handbook you are still unsure of the answer, please contact your EGP regional coordinator to find out what is needed and how to apply (see the “Contacts for more information” section of this handbook).



Photo: Parks Canada

“My husband wanted to protect a small corner of the world to ensure that future generations could experience the same joy he had as a child while playing in the woodlot.”  
([www.ec.gc.ca/pde-egp](http://www.ec.gc.ca/pde-egp))

**Heather Elliott**

Photo: Ian Parsons

A wide range of lands qualify as ecologically sensitive—from cliffs and forests to shorelines, wetlands, and grasslands. One of the first steps in the EGP process is to certify the land considered for donation as ecologically sensitive. This certification is carried out by the federal Minister of the Environment or a delegated authority. Delegated certification authorities include some provincial governments and selected environmental charities.

Ecologically sensitive lands are areas or sites that currently, or could potentially in the future, contribute significantly to the conservation of Canada’s biodiversity and environmental heritage. Some provinces, including Ontario, Quebec, New Brunswick and Prince Edward Island, have additional specific criteria to further define ecologically sensitive lands. For province-specific information, please consult with your EGP regional coordinator or the EGP website ([www.ec.gc.ca/pde-egp](http://www.ec.gc.ca/pde-egp)).



Photo: Ian Parsons

### Donation options

Each ecological gift is unique and a number of donation options are available to donors. Landowners do not necessarily need to sever their connection with the land. Ecological gifts donated to eligible recipients include the following:

#### Full title

Also known as “fee simple” in common law jurisdictions and simply as “ownership” in the Quebec civil code, it is possible to donate the full title with no reserved rights to an eligible recipient. Many landowners choose this option. Donations of full title constitute approximately 60% of all ecological gifts.

### Inventory land

Inventory land is land which has been acquired for resale by the owner during the normal course of carrying on business. Examples include developed or undeveloped lots owned by a developer and intended for sale. Capital property, on the other hand, is generally purchased either for long-term business use, such as farming, or for personal use.

Donations of inventory land may qualify as ecological gifts if they meet certain criteria in the *Income Tax Act* of Canada. However, such gifts are not subject to the same tax benefits as gifts of capital property. All profits derived from the disposition of inventory land must be included in the taxpayer’s income for the year.

For more information on issues involving inventory lands, please consult Interpretation Bulletin IT-218R: *Profits, Capital Gains and Losses from the Sale of Real Estate, including Farmland and Inherited Land and Conversion of Real Estate from Capital Property to Inventory and Vice Versa*. This document can be accessed at: [www.cra-arc.gc.ca/E/pub/tp/it218r/README.html](http://www.cra-arc.gc.ca/E/pub/tp/it218r/README.html).

### National criteria for ecological sensitivity

The existing environmental characteristics of the land need to be included in the consideration of what is ecologically sensitive. The following national criteria currently apply:

- areas identified, designated or protected under a recognized classification system;
- natural spaces that are significant to the environment in which they are located;
- sites that have significant current ecological value or potential for enhanced ecological value as a result of their proximity to other significant properties;
- private lands that are zoned by municipal or regional authorities for the purpose of conservation;
- natural buffers around environmentally sensitive areas such as water bodies, streams or wetlands; and
- areas or sites that contribute to the maintenance of biodiversity or Canada’s environmental heritage.

## Eligible interests or rights in land: conservation easement, covenant or real servitude

Landowners can preserve the natural values of their property and still retain ownership by entering into a conservation easement, covenant or real servitude agreement (depending on the province) with an eligible recipient. Outside the Province of Quebec, eligible interests in land are covenants or conservation easements and can be donated to the program. The eligible right in land considered by the EGP for donation in the Province of Quebec is a real servitude.

These agreements are registered on title and protect a property's conservation values by permanently placing terms and conditions which are determined and agreed upon by the donor and recipient on its use in perpetuity. Under the terms of the agreement, the donor continues to own the land and may live on it, sell it, or pass it on to heirs. It is the responsibility of the recipient to ensure that the restrictions placed on the

### Conservation easements, covenants or real servitudes

Outside the Province of Quebec, eligible interests in land are covenants or conservation easements and can be donated to the program. The eligible right in land considered by the EGP for donation in the Province of Quebec is a real servitude. Such agreements are made when landowners wish to protect their land from certain activities in perpetuity.

For example, a farming family in Ontario has cultivated the upland areas of their property for decades, but has left wetlands and some surrounding areas wild, treasuring these areas as places to explore nature and witness the hatching of ducklings each spring. By registering a conservation easement on the title to their land, and subsequently donating the conservation easement to an eligible recipient, the family could protect their wetlands from disturbances such as development, drainage or cultivation, yet continue to work the rest of the property as they always have.

property are followed in the future, regardless of who owns the land. This type of agreement constitutes approximately 40% of all ecological gifts to date.

The terms of the conservation agreement (easement, covenant or real servitude) used under the EGP must protect the ecologically sensitive features for which the land is certified. Strong conservation easement, covenant and real servitude drafting is therefore critical to ensure that the ecological sensitivity is maintained. The Minister of the Environment's certification of ecological sensitivity does not assess the conservation agreement's rigour or defensibility in a court of law.

Photo: Canadian Wildlife Service



"We have always been very concerned about the loss of wetland and woodland habitat. Forty years ago we purchased a marsh and pond known locally as Mud Lake. Over the years we have enjoyed this property immensely and have added to its wildlife value with reforestation. It is designated a Provincially Significant Wetland and the property is also now a Managed Forest for Wildlife. Through a conservation easement with the Nature Conservancy of Canada, it will continue to be preserved with absolutely no development of any kind allowed now or in the future, regardless of who owns the property, as the protection is registered on the property deed."

([www.ec.gc.ca/pde-egp](http://www.ec.gc.ca/pde-egp))

**Don and Ruth Bucknell**

## Retained rights to use donated lands

In common law jurisdictions, landowners may donate a remainder interest in land but retain a life interest—that is, the right of the landowner (or someone else named by the donor) to live on the land for life. In the civil code jurisdiction of Quebec, donors who donate land for conservation purposes can retain a right of usufruct, use or habitation for life, each of which allows for their ongoing use of the donated land. It is also possible in Quebec to transfer the ownership of the land while retaining ownership of the constructions, works and plantations situated on that land. This right is known as “superficies” and is considered as a transfer of ownership. For more information, please see the EGP publication *Retaining the Right to Use Land Donated as an Ecological Gift*.

## If the donor is not a Canadian citizen

Several eligible recipients facilitate donations of land in Canada by citizens of the United States. Please contact your EGP regional coordinator or a qualified recipient for more information if you fall into this category.



# RECIPIENTS

## Who can receive ecological gifts?

Landowners can donate ecological gifts to eligible environmental charities that are approved by the federal Minister of the Environment, as well as to federal, provincial and territorial governments, municipalities, and municipal or public bodies that perform a function of government within Canada. Most ecological gifts to date have been donated to environmental charities aimed at conserving nature, such as local, provincial or national conservation groups. Ecological gifts made to private foundations are not eligible for the tax-free treatment of the capital gain arising from the donation of ecological property.

In order to be eligible to receive an ecological gift, an environmental charity must:

- have registered-charity status with the Canada Revenue Agency;
- have as one of its primary objects the “conservation and protection of Canada’s environmental heritage” or some similar statement of intent acceptable to the federal Minister of the Environment or a delegated authority;
- have as one of its primary objects the “acquisition and management of real estate for conservation purposes” or some similar statement of intent acceptable to the federal Minister of the Environment or a delegated authority; and
- apply to Environment Canada or to the Province of Quebec for eligibility.

“When I saw all this natural beauty so close to Montréal, and canoeists who were enjoying it, I knew that now everyone, not just my children and my grandchildren, could learn about nature thanks to my marsh. I hope that my gift will allow future generations to enjoy all the beauty that nature holds.”  
([www.ec.gc.ca/pde-egp](http://www.ec.gc.ca/pde-egp))

**Marcelle  
Cordeau Parent**



Photo: Lesley Dunn

Environment Canada continually updates a list of nearly 200 eligible environmental charities across Canada on the EGP website ([www.ec.gc.ca/pde-egp](http://www.ec.gc.ca/pde-egp)). Once eligible, environmental charities are approved in the context of each proposed ecological gift. Under some circumstances (e.g. failure to maintain charitable status), charities may be removed from the list of eligible recipients.

### Automatic eligibility

Federal, provincial and territorial governments, municipalities, and municipal or public bodies that perform a function of government within Canada are automatically eligible to receive ecological gifts.

## Recipient responsibilities

The recipient is responsible for:

- issuing an official donation receipt when the ecological gift has been completed; and
- ensuring that the biodiversity and environmental heritage features of the donated property or eligible interest or right in the property are maintained and managed according to the terms of the transfer of land, conservation easement, covenant or real servitude in perpetuity.

### Assisting donors

It is helpful for recipients to understand the steps involved in the EGP certification process (outlined on page 22) so that they can answer questions from donors. Recipients should not offer tax or legal advice; rather, they should strongly advise potential donors to seek independent professional tax and legal advice and to ensure that all the implications of the donation are clearly understood. Recipients sometimes take the lead in:

“The pine seedlings are now a towering grove and represent our work as a family and our desire to replenish the Earth and conserve it for future generations. I hope my children and their children will be able to walk under these same trees. I know my father would be proud of my having given back in a meaningful way.”  
([www.ec.gc.ca/pde-egp](http://www.ec.gc.ca/pde-egp))

**Anne Shepherd**

- initially assessing the ecological sensitivity of the potential gift;
- arranging for an appraisal of the fair market value of the donated property; and
- coordinating the ecological sensitivity certification process.

### Arranging a donation

The application process to the EGP may be initiated by the donor or the recipient (with the donor's written consent). During this stage, the two parties should clarify their expectations about the proposed transfer of land, or eligible interest or right in land such as an easement, covenant or real servitude, and investigate the options available. This may include determining who will pay for surveys, appraisals and legal costs associated

with the donation. Both the donor and recipient should seek independent professional legal and tax advice to ensure that they clearly understand the implications of the donation.

## How to become an eligible recipient

To apply for eligibility, an environmental registered charity must send a request in writing to: National Coordinator, Ecological Gifts Program, Canadian Wildlife Service, Environment Canada, 351 St. Joseph Boulevard, Gatineau, QC K1A 0H3 or by fax to 819-953-3575. The application package must include:

- full contact details (business address, email address, fax and phone numbers);
- an explanation of the mission of the organization and some examples of the types of projects it undertakes;
- the organization's Charitable Registration Number and a complete certified copy of the organization's Letters Patent, incorporation papers or other governing documents that include the full statement of objects or purpose;
- an expression of the organization's willingness and demonstration of its financial and human resource capacity to receive and manage ecological gifts;
- a demonstration that the organization has adopted, or a board resolution that the organization has made a commitment to work towards, adopting a recognized national or provincial set of ethical and technical guidelines for the responsible operation of a land trust to guide the organization's land securement and management practices; and
- a dissolution or winding-up clause that is compatible with the requirements of the EGP.

A response from the National Coordinator can be expected within six weeks. Where appropriate, an indication of the urgent nature of a request may expedite the approval process.

### Checklist: Arranging a donation

- ✓ Parties are satisfied that the donation is a gift, that the land is likely to be certified as ecologically sensitive, and that the recipient is eligible to receive ecological gifts.
- ✓ Parties have clarified their expectations and have investigated donation options.
- ✓ Parties have sought independent professional legal and tax advice.
- ✓ Parties have reached a tentative agreement.





### Maintaining the property

Ecological gift donations must be protected in perpetuity. For fee simple/ownership donations of ecologically sensitive lands, recipients have a responsibility as new owners of the land to maintain the biodiversity and environmental heritage of these

#### Remember...

It is the donor who officially applies to the EGP. All information submitted to the EGP by the recipient about the donation should be shared with the donor, including information pertaining to the ecological sensitivity of the property.

properties. This responsibility is shared by the donor and the recipient in cases where the donation is an eligible interest or right in land such as a conservation easement, covenant or real servitude, depending on the nature of the conservation agreement.

As part of maintaining the ecologically sensitive land, the responsibilities of the recipient may also include paying property taxes, ensuring visitor safety, identifying and remediating environmental hazards, and carrying liability insurance. It also often involves preparing a management plan, setting up a stewardship program, and initiating a monitoring regime. In the case of an eligible interest or right in land, responsibilities include ensuring that the conservation easement, covenant or real servitude is enforced, and that a baseline report and monitoring strategy are developed and implemented.

Before accepting an ecological gift, recipients should be aware of all of their associated responsibilities and ensure that they have the financial and human resources to carry them out over the long term.

“I really wanted to see the area preserved. The donation ensures that the natural treasures of our land will be safeguarded and can be cherished by humanity for a long time. As for us, we still enjoy the area, but we are assured that if some project threatens to affect the nature of things, the NCC will be in a better position to provide the necessary protection.”

([www.ec.gc.ca/pde-egp](http://www.ec.gc.ca/pde-egp))

**Peter Neville**

#### Fees

There are no fees associated with certifying ecological sensitivity or the eligibility of a recipient; however, there are costs associated with donating land and preparing the necessary documentation. Deciding who commissions and pays for services such as surveys, appraisals and other related costs may be a matter of policy for the recipient, or may be negotiable between the donor and recipient, depending on the resources available.

## What safeguards are there?

EGP eligible recipients play a vital role in protecting Canada's biodiversity and environmental heritage. Recipients are responsible for the long-term management and conservation of ecological gifts and their ecologically sensitive features. To ensure that these features are left intact for the benefit of future generations, charitable and municipal recipients must seek prior written authorization from the Minister of the Environment for all changes in use and dispositions. Otherwise, as per the *Income Tax Act* of Canada section 207.31, these recipients would be subject to a tax equal to 50% of the fair market value of the land at the time of the unauthorized change in use or disposition.

## Disposition

With respect to an ecological gift, the Minister of the Environment generally considers that any change to title that temporarily or permanently transfers property, in whole or in part (including the transfer or assignment of an eligible interest or right in land such as a conservation easement, covenant or real servitude), constitutes a disposition.

## Change in use

Environment Canada considers a recipient to have changed the use of an ecological gift if the recipient:

- undertakes or tolerates any action that results in or could result in a diminution of the ecological condition or protection of the ecological gift;
- changes any of the terms of a conservation agreement (easement, covenant or real servitude); or
- fails to enforce the terms of the conservation agreements (easement, covenant or real servitude), which result in or could result in changes to the ecological condition of the property.

To seek authorization of any proposal for a disposition or change in use, recipients must write to their regional coordinator in advance. Generally, Environment Canada will only authorize dispositions or changes in use that do not negatively impact the ecological characteristics for which the land was originally certified. For more information, please consult the EGP publication *Disposition or Change in Use of Ecological Gifts – What Recipients Need to Know*, which is available online ([www.ec.gc.ca/pde-egp](http://www.ec.gc.ca/pde-egp)).

# PROGRAM PROCESS

## An overview

Ecological gifts are land donations that qualify for and receive favourable income tax treatment, and therefore have specific requirements above and beyond other kinds of donations. In order for an ecological gift to meet these requirements, the federal Minister of the Environment must:

- certify the property as ecologically sensitive;
- approve the recipient as eligible to receive the ecological gift; and
- certify the fair market value of the donated property.

There are a number of steps to be completed in cooperation between the donor, the recipient, and the EGP, as part of the donation process, including:

- arranging the donation;
- preparing and filing information on ecological sensitivity; and
- determining the fair market value of the donated property.

This process, involving the arrangement of a donation, review of documentation and the receipt of all necessary certifications, can take several months to complete; therefore, donors are advised to apply to the EGP for a determination of fair market value as early in the year as possible, should they wish to use the tax benefits of their donation that same year.

National and regional program coordinators are available to help at any time with a variety of aspects of the EGP process.

## Assessing ecological sensitivity

Donors and recipients should work together in assessing the ecological sensitivity of the proposed ecological gift, and the assessment should demonstrate that national and, if applicable, provincial and territorial criteria are met at the time of the transfer of the gift to the recipient.

The following information should be included in the assessment:

- a summary of the property's ecological values and how the national and/or regional ecological sensitivity criteria are met as outlined on page 8;
- an assessment of the present condition of and threats to the site;
- the proportion of the property that comprises different habitat types (e.g. wetland, forest, grassland), and whether there are watercourses, shorelines, cliffs, dunes or other special features present;
- a list of any significant species known to be present;
- a list or copies of any reports or documents in which the diversity of the flora or fauna on the site has been described;
- reference to any local, regional, national, international or other formal ranking of the significance of the site, and reference to the reports in which this ranking is noted;
- a description of any buildings or other permanent structures on the property;
- any restoration or site-enhancement measures proposed to upgrade the ecological quality of the property;
- maps, plans and aerial photographs of the site delineating the area and location of the donation; and
- title documents documenting all current legal owners on title, as well as any liens or encumbrances, notably a mortgage.



## Filing information on ecological sensitivity

The first step in the ecological gift certification process is to provide the assessment information as outlined in the text boxes on pages 8 and 15. This information is needed to determine whether the property qualifies as ecologically sensitive as defined by national, provincial or territorial criteria recognized by the federal Minister of the Environment.

There is no formal application form, but Appendix A provides a template that could be followed to ensure that all of the required information is submitted when applying for a *Certificate of Ecologically Sensitive Land, Recipient Identification, and Registered Charity Approval Pursuant to the Income Tax Act of Canada*. Donors who own land in Quebec should refer to the document *Dons écologiques : Guide pour l'obtention du Visa fiscal*, which can be accessed on the Ministère du Développement durable, de l'Environnement et des Parcs website [www.mddep.gouv.qc.ca/biodiversite/prive/don-visa/index.htm](http://www.mddep.gouv.qc.ca/biodiversite/prive/don-visa/index.htm).

The donor, often in cooperation with the proposed recipient, collects the following information, which is then sent to the regional coordinator or a delegated certification authority for review:

- the full name, email address and mailing address of each donor, and written confirmation of each donor's willingness to take part in the program;
- proof of ownership of the subject property (e.g. a copy of current title documents) and the complete legal description of the property under a Provincial Land Titles Act or Land Registry System (general descriptions are not acceptable);
- the name, address and charitable registration number (if applicable) of the intended recipient, confirmation that the recipient is eligible to receive ecological gifts (registered charities must be deemed eligible by the Minister of the Environment) and written confirmation that the recipient is willing to accept the proposed donation;
- the type of donation—transfer of title (in Quebec, “ownership”) in fee simple or eligible interest (covenant or conservation easement) or eligible right (real servitude) in land—and, in the case of an eligible interest or right in land, a dated draft or final copy of the agreement (the terms of which must relate to and protect the ecologically sensitive features of the land);
- the surveyed area (or approximate area, if not surveyed), in hectares or acres, of the land being donated (if a conservation easement, covenant or real servitude applies to only a portion of the site, provide both the gifted and total areas);
- a brief assessment (approximately two pages) of the ecological character and condition of the proposed ecological gift, including relevant national or provincial criteria; and
- information on the current status of the donation, why it is being made, the anticipated timing of completion, and the recipient's intentions for the future management or enhancement of the land.



*Certificates of Ecologically Sensitive Land* (or, in Quebec, the letter of intent for the *Visa fiscal*) are issued directly to the donor, with a copy sent to the recipient. If the donation of an ecological gift is delayed or cancelled after the certificate or *Visa fiscal* has been issued, the recipient or donor should notify their regional coordinator.

Some provinces have particular ecological sensitivity requirements. For more specific information, please contact the regional coordinator nearest to the property in question.

### Checklist: Certifying a property as ecologically sensitive

- ✓ The required information on the ecological sensitivity of the property and on the donor and the recipient has been filed with Environment Canada or a delegated certification authority.
- ✓ If necessary, a copy of the conservation easement, covenant or real servitude is included.
- ✓ A copy of the baseline report has been submitted for conservation easements, covenants and real servitudes.
- ✓ The regional coordinator has been notified in the event of a delay in or cancellation of the transfer.

## Certifying the value of the donated property

The fair market value of all properties gifted under the EGP must be certified by the federal Minister of the Environment. For provincial income tax purposes in the Province of Quebec (in accordance with the Quebec *Taxation Act*), the value of the donated property must also be certified by the Ministère du Développement durable, de l'Environnement et des Parcs. The donor must submit a complete *Application for Appraisal Review and Determination for the Fair Market Value of an Ecological Gift*, including an appraisal report that conforms to the *Ecological Gifts Program Guidelines for Appraisals*. Application forms and the guidelines are available from EGP regional coordinators and on the EGP website ([www.ec.gc.ca/pde-egp](http://www.ec.gc.ca/pde-egp)).

## Commissioning the appraisal

Either the donor or the recipient must commission an appraisal that conforms to the EGP guidelines to estimate the ecological gift's fair market value.

Appraisals must conform to the *Canadian Uniform Standards of Professional Appraisal Practice* (the Standards) or, in Quebec, *Les normes de pratique professionnelle des évaluateurs agréés*, as well as to all Environment Canada requirements outlined in the publication *Ecological Gifts Program Guidelines for Appraisals*. The guidelines are available on the EGP website and through the regional coordinators. All appraisers commissioned to appraise a proposed ecological gift should consult these guidelines.

For consideration:

- for assessments involving an eligible interest or right in land such as a conservation easement, covenant or real servitude, the appraiser must be provided with a dated draft or final copy of the agreement when undertaking the appraisal. The dated draft or final agreement must be included when the appraisal report is submitted for review. Note that if the agreement changes after the completion of the appraisal, the changes must be submitted to the appraiser to determine their impact on value. This may result in certification delays;
- a copy of the current title documents must be included with the appraisal, along with evidence of any existing interests and encumbrances or, in Quebec, rights or charges considered in the valuation;
- appraisers should be cautioned that hypothetical conditions and extraordinary assumptions that would have an impact on the highest and best use of a property are not permitted; and
- donors and recipients may wish to work with their appraiser early in the donation process to estimate the value of the property to be donated. The appraisal itself, however, must be current. Ideally, the appraisal's effective date should be as close to the application and/or donation date as possible,



particularly for areas where the real estate market is changing rapidly. Please check the *Ecological Gifts Program Guidelines for Appraisals* for specific timelines.

The party that engages the appraiser should ensure that the appraiser has experience in both the local area and in the type of real-estate interest or right in land involved (i.e. fee simple, transfer of title or of an interest such as a conservation easement, covenant or, in Quebec, ownership or real servitude). Ecological gift valuation training courses for appraisers and recipients are periodically held across Canada to help improve knowledge and understanding of the specific EGP requirements.

## Finding an appraiser

For assistance in finding an appraiser who has been trained in the valuation of property that is the subject of an ecological gift, visit the Appraisal Institute of Canada's website ([www.aicanada.org](http://www.aicanada.org)) or contact them at 1-800-441-8062 or [info@aicanada.ca](mailto:info@aicanada.ca). In Quebec, contact the *Ordre des évaluateurs agréés du Québec* at 1-800-982-5387 or [oeaq@oeaq.qc.ca](mailto:oeaq@oeaq.qc.ca).

All appraisals will be reviewed by one or more members of EGP's independent Appraisal Review Panel, as per the standards of the Appraisal Institute of Canada or the *Ordre des évaluateurs agréés du Québec*. The panel is an independent advisory body comprised of senior appraisers and other specialists located throughout the various geographic regions of Canada.

For more information, please see the EGP's publication *Engaging an Appraiser to Appraise an Ecological Gift*. The EGP website ([www.ec.gc.ca/pde-egp](http://www.ec.gc.ca/pde-egp)) also contains a list of the publications that are available to assist appraisers.

## Submitting the application and appraisal report

A completed *Application for Appraisal Review and Determination of the Fair Market Value of an Ecological Gift*, signed and dated by *all* of the donors on title to the proposed ecological gift, must be submitted to the regional coordinator who is in closest geographic proximity to the donated property. Additionally, three (3) colour copies of the completed appraisal report must be submitted. For appraisals of eligible interests or rights in land, a copy of the signed final or dated draft conservation easement, covenant or real servitude must be included in the application package. Application forms are available from your EGP regional coordinator or the program website.

For donors wishing to receive a *Notice of Determination of Fair Market Value of an Ecological Gift* before the end of the calendar year, applications must be submitted no later than mid-September. Incomplete application forms or appraisals may be returned for more information and/or revision.

### Appraiser licences

In provinces that require a licence to establish the fair market value of real property (such as Nova Scotia and New Brunswick), appraisers must have a licence in addition to their acceptable professional designation.

## Receiving a Notice of Determination of Fair Market Value of an Ecological Gift

### Timeframe

The fair market value indicated on the *Notice of Determination of Fair Market Value of an Ecological Gift* applies to the subject property for two (2) years from the notice date, for all income tax purposes related to charitable gifts.

Following the review of the appraisal by one or more members of the EGP's independent Appraisal Review Panel, the donor will receive a *Notice of Determination of Fair Market Value of an Ecological Gift* indicating the fair market value that the federal Minister of the Environment has determined for the property. In most cases, when the appraisal conforms to the standards outlined in the *Ecological Gifts Program Guidelines for Appraisals*, this process typically takes no longer than 90 days.

Within 90 days of the original issuance of the *Notice of Determination of Fair Market Value of an Ecological Gift*, the donor must choose one of the following options:

- accept the fair market value as determined and return the *Notice of Determination of Fair Market Value of an Ecological Gift* to the regional coordinator;
- request, in writing to the regional coordinator, a redetermination by the Redetermination Committee of the Appraisal Review Panel at its next scheduled meeting; or
- withdraw the application from the EGP.



## Completing the ecological gift

The donor may accept the determination of fair market value by completing, signing and returning either the *Notice of Determination of Fair Market Value of an Ecological Gift* or the *Notice of Redetermination of Fair Market Value of an Ecological Gift* to the appropriate regional coordinator. The donor and the recipient are then both responsible for completing the donation by registering the land transfer or eligible interest or right in land on title.

Once the regional coordinator has received evidence that the donation has been completed—such as a copy of the registered transfer document or documentation proving that the conservation easement, covenant or real servitude agreement has been registered on title—a *Statement of Fair Market Value of an Ecological Gift Pursuant to the Income Tax Act of Canada* will be issued to the donor. If the content of the registered conservation easement, covenant or real servitude agreement (or any other interest on the land) differs from that of the draft used for the appraisal, a letter from the original appraiser indicating whether this change has any effect on the donation's value must be provided for consideration by the Appraisal Review Panel. The fair market value indicated on the *Statement of Fair Market Value of an Ecological Gift Pursuant to the Income Tax Act of Canada* should be used to prepare the donation receipt issued by the recipient. (See the “Recipient responsibilities” section of this handbook for more information.)

### The redetermination process

Donors requesting a redetermination of fair market value of a property should provide details on the factors or circumstances pertaining to the need for a redetermination, as well as any new information that could affect the recommendation of the Redetermination Committee of the Appraisal Review Panel. This could include additional written submissions from the appraiser or others supporting the value estimated in the appraisal report, or a rebuttal to reasons given for the determined value, additional appraisal reports or relevant updated market information.

The Redetermination Committee of the Appraisal Review Panel meets on an as-needed basis and makes its recommendation to the Minister of the Environment on the fair market value of the property within 60 days of completing its redetermination. The Minister of the Environment then issues a *Notice of Redetermination of Fair Market Value of an Ecological Gift* after considering the recommendation received from the committee.

If, following the completion of the ecological gift and the issuance of the official donation receipt, donors are still not satisfied with the fair market value of the donated property as determined by the Minister of the Environment, they may appeal the determined value to the Tax Court of Canada. For donors residing in Quebec, the value determined by the Tax Court of Canada will serve for the purposes of the federal income tax return and that determined by the Court of Quebec for the provincial income tax return. This course of action may only be pursued after the EGP's redetermination process has been completed.

Once the entire certification process has been completed, the donor will receive:

- a *Certificate of Ecologically Sensitive Land, Recipient Identification, and Registered Charity Approval Pursuant to the Income Tax Act of Canada* (or, in Quebec, a *Visa pour dons de terrains ou de servitudes ayant une valeur écologique*), signed by the federal Minister of the Environment or a delegated authority;
- a *Statement of Fair Market Value of an Ecological Gift Pursuant to the Income Tax Act of Canada* signed by the federal Minister of the Environment or a delegated authority; and
- an official donation receipt for the gift from the recipient.

All three of these documents must be included with the donor's income tax return in support of the ecological gift being claimed.

### Donation receipts

The recipient will issue a donation receipt for the ecological gift after Environment Canada has issued the *Statement of Fair Market Value of an Ecological Gift Pursuant to the Income Tax Act of Canada* to the donor. A detailed list of requirements for official donation receipts from charities is available on the CRA website ([www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/rcpts/menu-eng.html](http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/rcpts/menu-eng.html)) or by calling 1-800-959-2221.

## Checklist: Certifying the value of the donated property and completing the ecological gift

- ✓ The appraiser has been provided with all of the relevant information necessary to undertake the appraisal assignment.
- ✓ The appraisal meets the required professional standards and the *Ecological Gifts Program Guidelines for Appraisals*.
- ✓ The *Application for Appraisal Review and Determination of the Fair Market Value of an Ecological Gift* has been signed and dated by all of the donors listed on title.
- ✓ Copies of the current title documents have been provided with the application.
- ✓ Three (3) colour copies of the appraisal have been submitted
- ✓ The donor has received the *Notice of Determination of Fair Market Value of an Ecological Gift* and has either accepted the value determined and confirmed that he or she wishes to pursue the donation, requested a redetermination, or withdrawn from the program and notified the regional coordinator in writing.
- ✓ The donation has been completed by the donor and recipient (i.e. the property has been transferred and the transfer has been registered).
- ✓ A copy of the registered transfer document and, in the case of an eligible interest or right in land, a final copy of the registered conservation easement, covenant or real servitude agreement has been submitted.
- ✓ The *Statement of Fair Market Value of an Ecological Gift Pursuant to the Income Tax Act of Canada* has been received by the donor from the Minister of the Environment.
- ✓ The official receipt is issued from recipient to donor.







## Closing words

The donation of a property of ecological significance, or the acceptance of terms and conditions contained in a conservation agreement (easement, covenant or real servitude), is a choice that an increasing number of generous Canadians are considering. Current ecological gifts stretch across every region of southern Canada and make a significant contribution to creating a network of protected areas that reflect a broad diversity of wildlife habitat types.

The EGP welcomes your questions, comments and suggestions for improving this vital conservation tool. Please contact the program's National Secretariat or a regional coordinator at the numbers listed in the Introduction section of this handbook and on the EGP website ([www.ec.gc.ca/pde-egg](http://www.ec.gc.ca/pde-egg)).

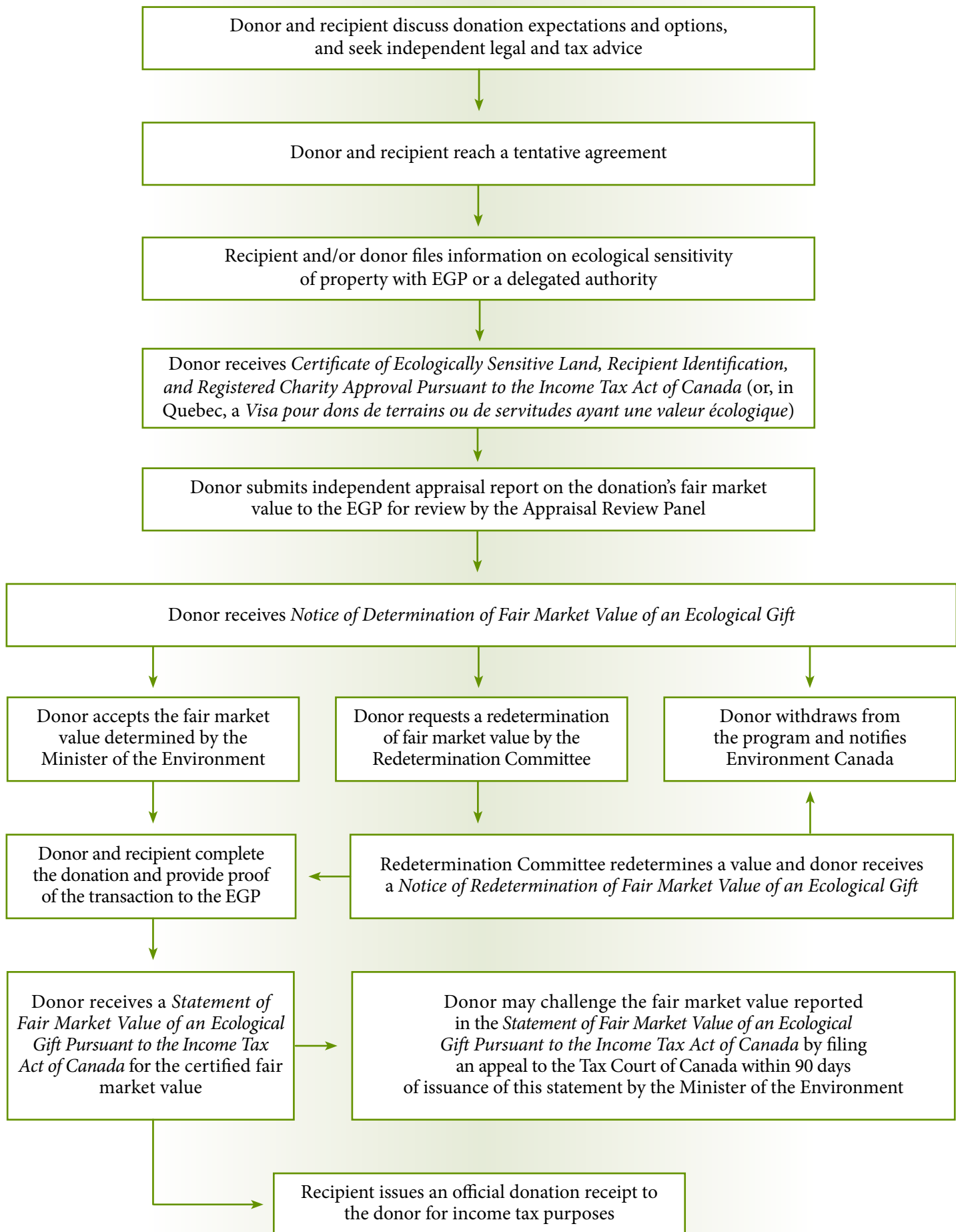
## Appeals to the Tax Court of Canada

The donor may appeal to the Tax Court of Canada only if an irrevocable gift of the ecological property has been made and the following conditions are satisfied:

- the Minister of the Environment has issued a *Notice of Redetermination of Fair Market Value of an Ecological Gift* to the donor;
- the Ecological Gift donation has been completed and registered to the recipient;
- the Minister has issued a *Statement of Fair Market Value of an Ecological Gift Pursuant to the Income Tax Act of Canada*; and
- the appeal to the Tax Court has been made within 90 days from the day on which the *Statement of Fair Market Value of an Ecological Gift Pursuant to the Income Tax Act of Canada* was originally issued.

The Tax Court of Canada may confirm or vary the amount indicated in the *Statement of Fair Market Value of an Ecological Gift Pursuant to the Income Tax Act of Canada*. This value is then deemed to be the fair market value of the donated property as determined by the Minister of the Environment.

## Summary of program process





# APPENDIX A

## Sample Ecological Gift Donation

**Donor name/(Corporation name and number):** Jane Smith

**Donor address:** 123 Elm Street, Whatsitville, ON 5N5 2T9

**Phone number:** 1-555-555-5555 ex 555

**Email:** jsmith@youconnect.ca

**Recipient name:** Happy Creek Land Trust

**Recipient address:** 22 Main Street, Whatsitville, ON A1A 1A1

**Charitable tax number:** Registered Charity # 123445678

**Property description:** (e.g. lot/lot subdivision, range, cadastral information)

**Geographic location of property:** Region, County, Municipality, Other

### Eligible recipient

- ✓ The Happy Creek Land Trust is listed on Environment Canada's Ecological Gifts Program website as an eligible environmental charity.

### Letters of intent

- ✓ Letter of intent signed by donor outlining her willingness to donate and to participate in the EGP is attached.
- ✓ Letter of intent from the recipient expressing willingness to accept the donation and manage it as an ecological gift is attached.

### Legal description:

Part of Lot 27, Concession 5, Municipality of Whatsitville, Wherever Co. (the Smith property, "Jane's Woods").

- ✓ Title documents included.
- ✓ A map included if available.

### Type of donation:

A conservation easement under the Ontario *Conservation Land Act*.

- ✓ Near-final draft of Jan. 18, 2010, is attached.

**Area:** 45 hectares



## Assessment of ecological character

The subject property is known as “Jane’s Woods.” Approximately half of the property is gently rolling to flat upland, with some limestone outcroppings and low cliffs. The remainder is flood plain/lowland with Happy Creek forming much of the eastern border of the property. Most of the property is forested, but 10% is taken up by an old field and an adjoining residence and barn. The site provides both terrestrial and aquatic wildlife habitat, serves as a wildlife corridor, and is habitat for several species at risk. The lowland and much of the upland is part of the Happy Creek/Jane’s Woods (municipal) Environmentally Sensitive Area (ESA), and the Ontario Ministry of Natural Resources (OMNR) has identified Happy Creek as Brook Trout habitat. The property is in good condition, having been left by the current owner in its natural state for 40 years, with no logging having occurred in the past 80 years. The landowner is actively removing invasive exotic species from the old field and selectively planting native plants to encourage residency of grassland bird species. Threats include subdivision for housing, and upstream agricultural development, which are resulting in the siltation of Happy Creek.

## Habitat and site characteristics

The property is approximately 90% forest and 10% residential/field.

✓ Please see photos attached.

## Species present

See attached lists from local naturalists club and landowner.

## Species at Risk present

Hart’s Tongue fern (COSEWIC Species of Special Concern) occurs in the northeast corner of the property.

## Non-ecological elements

Structures on the property (e.g. house [size 2000 sq. ft.], old barn [1500 sq. ft.], garden shed [300 sq. ft.]; commercial/industrial activities; degraded areas).

✓ See attached map for their locations.

## Specific provincial ecological gift criteria applicable to the property

Ontario Criteria:

- A-1** Hart’s Tongue fern – Federal Species of Special Concern. Noted by local naturalists club, reported to OMNR by Happy Creek Land Trust.
- A-5** Landowner is registered in the Managed Forest Tax Incentive Program (MFTIP) (forest plan attached).
- A-14** Happy Creek/Jane’s Woods ESA (municipal report attached).
- B-5** Fish habitat for Brook Trout noted by OMNR (John Pike, personal communication).
- B-9** Part of forested corridor along Happy Creek within ESA. Observations of use by deer, also noted in ESA report (municipal report attached).

## Local, regional, provincial, national or international ranking for site significance

Environmentally Sensitive Area (ESA) – municipal. A copy of the municipal zoning map is attached.



## Status of donation

The donor and recipient intend to complete the donation by the end of the current calendar year.

## Purpose of the donation and future intentions of recipient

The donor wishes to see her land protected from surrounding development, but still wants to be able to sell it. She is also interested in the tax benefits of donation. The property is to be preserved, with only minimal logging or development of additional structures allowed (see attached conservation easement document). The current use and ecological character of the site will be unchanged and the donor is aware of the permanent legal restrictions applied by the conservation easement. Some site restoration will be undertaken, a plan for which will be submitted to Environment Canada for approval.

## Attached

All attachments noted: site map; aerial surveys; species lists; final conservation easement agreement; ESA report; forest plan; municipal property assessment; municipal zoning map; signed letter of intent from donor; and recipient signed letter of intention.

## Ecological information sources

- ✓ Local office of the OMNR – habitat for Brook Trout.
- ✓ Happy Creek/Jane's Woods ESA report (website link attached).
- ✓ The local naturalists club has also compiled species lists for this area (attached).





# APPENDIX B

## Glossary

The following definitions are not exhaustive and are to be used for the purposes of this handbook only. Questions concerning specific donation implications should be directed to independent professional legal and tax advisors.

**Capital Gain:** Realized on the disposition of capital property, such as land that is not inventory, determined where the proceeds of disposition exceed the property's adjusted cost base (usually the original purchase price of the land). This capital gain is generally the amount by which capital property appreciates in value while it is in the owner's possession. For most gifts, the taxable portion is 50% of the capital gain; however, in the case of an ecological gift, none of the capital gain is taxable. Please see [www.cra-arc.gc.ca/E/pub/tg/t4037/README.html?slnk](http://www.cra-arc.gc.ca/E/pub/tg/t4037/README.html?slnk).

**Change in Use:** Environment Canada considers a recipient to have changed the use of an ecological gift if the recipient: a) undertakes or tolerates any action that results in or could result in a diminution of the ecological condition or protection of the ecological gift; b) changes any of the terms of a conservation easement, covenant or real servitude; or c) fails to enforce the terms of the conservation easement, covenant or real servitude, and this results or could result in changes to the ecological condition of the property.

**Conservation Easement:** A right of use over the land owned by another individual. For the purposes of the EGP, conservation easements must be intended by the donor and must function to protect and conserve the natural features of the land, wildlife habitats or other environmental heritage values. All conservation easements donated through the EGP must be registered on the title to the land and bind future owners to the terms of agreement.

*Note:* Covenants, conservation easements and real servitudes are similar in nature. Definitions under provincial and territorial legislation may vary, so always consult the appropriate provincial or territorial legislation for precise definitions.

**Covenant:** An agreement registered on title restricting the use of land or requiring some positive action to be taken to protect the land. For the purposes of the EGP, covenants must be intended by the donor and must function to protect and conserve the natural features of the land, wildlife habitats or other environmental heritage values. In addition to restrictions on land use, covenants are usually accompanied by a right of access for monitoring and enforcing compliance. All covenants donated through the EGP must be registered on the title to the land and bind future owners to the terms of agreement.

*Note:* Covenants, conservation easements and real servitudes may appear to be similar in nature. However, their respective definitions under provincial and territorial legislation may vary, so always consult the appropriate provincial or territorial legislation for precise definitions.

**Delegated Certification Authority:** The authority—a federal, provincial, territorial or non-government official—delegated by the federal Minister of the Environment to certify land as ecologically sensitive for the purposes of the EGP.

**Disposition:** With respect to an ecological gift, Environment Canada considers that any change to title that temporarily or permanently transfers property, in whole or in part (including the transfer or assignment of a partial interest), constitutes a disposition for the purposes of section 207.31 of the *Income Tax Act* of Canada.

**Donor:** The rightful owner of the property who is proposing to dispose of the property as a donation to a qualified recipient eligible to receive ecological gifts.

**Ecological Gift:** A gift of land or an eligible interest or right in land, such as a conservation easement, covenant or real servitude, that is certified as ecologically sensitive by the federal Minister of the Environment or the Minister's delegated authority in accordance with the provisions of the federal *Income Tax Act* of Canada, and that is afforded beneficial tax treatment in comparison with a typical charitable gift.



**Ecologically Sensitive Land:** Land that is certified by the Minister of the Environment or a delegated certification authority to meet the specific ecological criteria (see page 8).

**Fair Market Value:** Fair market value generally means the highest price, expressed in dollars, that a property would bring in an open and unrestricted market between a willing buyer and a willing seller, both of whom are knowledgeable, informed, and prudent.

**Fee Simple Estate (or Interest):** Absolute ownership, unencumbered by any other interests or estate, subject only to the limitations imposed by the governmental powers of taxation, expropriation, police power and escheat.

**Official Donation Receipt:** The receipt issued to a donor by a recipient as proof of the donor's gift for certain purposes of the *Income Tax Act* of Canada and containing the information required by Part XXXV of the *Income Tax Regulations, Receipts for Donations and Gifts*.

**Ownership:** In Quebec, the right to use, enjoy and dispose of property fully and freely, subject to the limitations and conditions for doing so as determined by law.



**Recipient:** An organization that may receive ecological gifts, including eligible environmental charities, federal, provincial, and territorial governments, municipalities, and municipal or public bodies that perform a function of government within Canada.

**Registered Transfer Document:** A document transferring title or interest to real property completed in standardized format and registered in land registration offices for the recording of ownership of real or immovable property. Exact terminology will vary by provincial jurisdiction. Transfer is most commonly associated with land titles, and deed with registry.

**Real Servitude (according to Civil Code):** In conservation terms, a legally binding agreement made between a landowner and a conservation organization or government agency for the purpose of protecting and conserving natural features of the land, wildlife habitats or other environmental heritage values. Under the proposed amendments to the definition of total ecological gifts in the *Income Tax Act* of Canada, only a real servitude would qualify as an ecological gift in Quebec. All real servitudes donated through the EGP must be registered on the title to the land, and will bind future owners to the terms of agreement.

**Note:** Covenants, conservation easements and real servitudes are similar in nature. Definitions under provincial and territorial legislation may vary, so always consult the appropriate provincial or territorial legislation for precise definitions.



**Superficies:** Ownership of the constructions, works or plantations situated on an immovable belonging to another person, the owner of the subsoil. Superficies is in itself a full right of ownership, including all the rights associated with ownership, but in a particular form.

**Title:** The lawful ownership of property as well as the legal means of evidence by which the owner has lawful ownership thereof.

**Title Abstract:** A written history of the title to a parcel of real estate, as recorded in a provincial or territorial land registry or land titles office. Abstracts include a condensed history of the title to individual parcels of land and a synopsis of all recorded documents or instruments affecting the title (e.g. deeds/transfers of land, mortgages, discharges of mortgages, encumbrances, easements and restrictive covenants, hypothecs, charges on immovable property, real rights such as a usufruct, a real servitude).

**Use:** A right of use is the right to enjoy the property of another for a time and to take the fruits and revenues (of the property) to the extent of the needs of the user.

**Usufruct:** The right of use and enjoyment, for a certain time, of property owned by another as one's own, subject to the obligation of preserving its substance.



# APPENDIX C

## **Additional Resources/Information**

### **National Ecological Gifts Program Publications Available on the EGP Website ([www.ec.gc.ca/pde-egp](http://www.ec.gc.ca/pde-egp))**

*Confirmation that Ecogifts are Eligible for Split-Receipting*

*Disposition or Change in Use of Ecological Gifts – What Recipients Need to Know*

*Donation and Income Tax Scenarios*

*Donor Brochure*

*Ecological Gifts Program Guidelines for Appraisals*

*Ecological Gifts Program Progress Report 1995–2003*

*Engaging an Appraiser to Appraise an Ecological Gift*

*Retaining the Right to Use Land Donated as an Ecological Gift*

### **Ontario-specific Publications**

*Answers to Donors' Questions*

*Answers to Recipients' Questions*

*Conservation Easements as Ecological Gifts*

*Donor Profiles*

*Tax Tools for Private Land: Facts for Advisors*

### **Quebec-specific Publications**

*The Ecological Gifts Program in Quebec: A Step-by-Step Guide*

*Dons écologiques : Guide pour l'obtention du Visa fiscal*

*Donor Profiles*

### **Alberta-specific Publications**

*Donor Profiles*

## Income Tax Information and Guidance

Canada Revenue Agency:

- *Income Tax Technical News No. 26 – Proposed Guidelines on Split-Receipting* ([www.cra-arc.gc.ca/E/pub/tp/itnews-26/itnews-26-e.pdf](http://www.cra-arc.gc.ca/E/pub/tp/itnews-26/itnews-26-e.pdf)).
- *Gifts and Income Tax*. Publication No. P113(E). Ottawa, Ontario: Canada Revenue Agency, 1994.
- *Gifts and Official Donation Receipts*. Publication No. IT-110R3. Ottawa, Ontario: Canada Revenue Agency, 1997.
- *Profits, Capital Gains and Losses from the Sale of Real Estate, including Farmland and Inherited Land and Conversion of Real Estate from Capital Property to Inventory and Vice Versa*. Publication No. IT-218R. Ottawa, Ontario: Canada Revenue Agency, 1995.
- *Gifts and Income Tax* ([www.cra-arc.gc.ca/E/pub/tg/p113/](http://www.cra-arc.gc.ca/E/pub/tg/p113/)).
- *Issuing Receipts* ([www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/rcpts/menu-eng.html](http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/rcpts/menu-eng.html)).
- *Operating a Registered Charity* ([www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/menu-eng.html](http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/menu-eng.html)).

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## Private Land Conservation and Stewardship

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**[www.ec.gc.ca](http://www.ec.gc.ca)**

Additional information can be obtained at:

Environment Canada

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Gatineau QC K1A 0H3

Telephone: 1-800-668-6767 (in Canada only) or 819-997-2800

Fax: 819-994-1412

TTY: 819-994-0736

Email: [enviroinfo@ec.gc.ca](mailto:enviroinfo@ec.gc.ca)



**[www.ec.gc.ca/pde-egp](http://www.ec.gc.ca/pde-egp)**