

the
Ontario

Ecogifts

handbook 2001



Environment
Canada

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Canada

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photo by: Lesley Dunn

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Introduction

ONTARIO ECOGIFTS HANDBOOK

Background

Canada's Ecological Gifts Program (EGP) has been providing income tax incentives to donors of ecologically sensitive lands and conservation easements since 1995. A series of income tax amendments introduced in the 1995, 1997, and 2000 federal Budgets, and in the fall 2000 economic statement, have allowed donors of ecogifts to apply the value of their gifts more fully against their income, and to reduce the taxable amount of the related capital gains.

"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 value to wildlife with reforestation. It is designated a Provincially Significant Wetland and the property is also now a Managed Forest for Wildlife. Through an Easement Agreement 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."

Don and Ruth Bucknell, Ingersoll, Ontario

This handbook is designed specifically for use by "recipient agencies" for the Ecological Gifts Program in Ontario – that is, the charities, municipalities, and Crown agencies that are eligible to receive gifts of ecologically sensitive lands. It pulls together information about the program from various sources, lays out the steps to be followed in the three approval processes under the program, and identifies the responsibilities of organizations involved in ecogift donations. It also attempts to anticipate questions that potential donors might ask, and provide information so that organizations can respond quickly and accurately.

The Ecological Gifts Program has evolved quickly over the past five years, and

continues to evolve as more experience is gained in dealing with new areas, particularly the review of appraisals of ecogifts and the treatment of conservation easements. Periodic updates to this handbook will be necessary – at least initially. Updated sections will be provided in loose-leaf form, for inclusion in the cover pocket. Suggestions from recipient agencies or others using this handbook for changes or additional information are welcome at any point.

In just six years, Canadians have gifted an area almost as large as the Bruce Peninsula National Park.

Contacts for information and assistance

The Ecological Gifts Program will only be successful if both donors and recipient agencies understand its benefits, and if they are able to proceed through the necessary approval processes easily. To make the program as user-friendly as possible, there are two sources of assistance that should be used whenever questions arise:

The EGP webpage, which includes background on the program and ongoing updates: www.on.ec.gc.ca/wildlife_e.html

Ecological Gifts Program staff – contact the Ontario office at (416)739-5828 or (416)739-4286, or by email at Lesley.Dunn@ec.gc.ca or Graham.Bryan@ec.gc.ca, or the national secretariat at 1-800-668-6767, or by email at ecogifts@ec.gc.ca

Other useful sources:

Canada Customs and Revenue Agency (CCRA): 1-800-267-6999 or www.ccrca-adrc.gc.ca

CCRA's publication on *Gifts and Income Tax*: Publication P113 (available on CCRA webpage)

The Environment Canada publication *Ecological Gifts - Implementing Provisions of the Income Tax Act of Canada*. www.cws-scf.ec.gc.ca/ecogifts

Need examples of tax benefits for a potential donor?
See the cover pocket.

Using the Ontario Ecogifts Handbook

Recipient agencies must be familiar with three approval processes, which are outlined in the three main sections of this handbook:

Qualifying as a recipient agency – See *Recipient Agency* section

Certifying a property as ecologically sensitive – See *Ecological Sensitivity* section

Certifying the fair market value of a property – See *Fair Market Value* section

As well, recipient agencies should be able to explain to potential donors the general tax advantages of being part of the Ecological Gifts Program. The cover pocket contains an outline of the income tax treatment (2000 tax year) of gifts of ecologically sensitive lands or conservation easements under this program, in comparison to similar gifts without the benefit of ecogift certification. Because the actual amendments to the *Income Tax Act* to implement the latest capital gains changes had not been enacted (but are in effect) at the time of writing, these examples should be viewed as preliminary, and they will be updated if necessary. Since each landowner's tax situation is unique, it is important to remember that these examples are generic in nature, and that the advice of a qualified professional will be needed to assess the benefits for individual donors.

Why encourage participation in the Ecological Gifts Program?

Since 1995, the EGP has become a valuable tool in conserving threatened habitats and biodiversity. As a partnership among landowners, conservation organizations, and government, it provides increased financial incentives for land or conservation easement donations, and greater awareness of the value of individual conservation actions.

Across Canada, the program has fostered over 155 ecological gifts covering 12,700 hectares of land – an area almost as large as Bruce Peninsula National Park. In Ontario alone over 80 gifts have been made, totaling nearly 4,000 hectares of wetland, forest, alvar and other important habitats.

In dealing with potential donors, recipient agencies will find that most people are interested in the income tax savings that the EGP provides. But for almost all donors, the underlying motivation is the desire to do something meaningful to protect nature, and to leave something of great value for future generations. The Ecological Gifts Program helps many people to act on that motivation, to the benefit of all Canadians.

Qualifying as a Recipient Agency

ONTARIO ECOGIFTS HANDBOOK

Who can receive ecogifts of land or easements?

In Ontario, three categories of organizations can qualify – Crown agencies, municipalities, and qualified charities.

■ Crown Agencies

Federal or provincial government agencies are automatically qualified to receive ecogifts. As well as government departments such as the Ministry of Natural Resources, these include related agencies such as the Ontario Heritage Foundation.

■ Municipalities

Any incorporated municipality automatically qualifies to receive ecogifts, including both local and regional or County municipalities. Related municipal bodies or corporations, such as a Water Board

or Planning Authority, can also accept ecogifts if they are in a position to legally issue tax receipts.

■ Qualified Registered Charities

Non-government organizations can receive ecogifts only if they have been accepted by Environment Canada as a “qualified registered charity”. To become qualified, an organization must meet the following criteria:

- It must have Registered Charity status with the Canada Customs and Revenue Agency (CCRA), and maintain this status from year to year; private foundations are excluded from being recipients;

Charities only have to apply once to become a recipient agency. Municipalities and Crown agencies are automatically qualified.

- Its purposes must include “the conservation and protection of environmental heritage” or some similar statement of intent acceptable to Environment Canada;
- It must have filed an application with Environment Canada requesting to be qualified, and showing its willingness and capacity to receive such gifts.

This application only has to be filed once. Environment Canada regularly updates the list of qualified registered charities, which is available on the EGP webpage, so donors can check on the status of organizations they are considering. Already, almost 60 Ontario organizations are on this list. Organizations that fail to file annual tax returns with CCRA and thus lose their charitable status will be removed from the list.

What about conservation authorities?

Conservation authorities have to apply as registered charities, either directly if they have charitable status, or indirectly through their conservation foundations.

How to become a qualified registered charity

There are no formal application forms – simply send a request letter to: National Coordinator, Ecological Gifts Program, Canadian Wildlife Service, Environment Canada, 351 St. Joseph Blvd., Hull, Quebec, K1A 0H3, fax (819) 953-3575. Include the following information:

- ✓ Full contact details – business address, e-mail, fax, and phone;
- ✓ The organization’s Business Number and Charitable Registration Number;
- ✓ A copy of the organization’s full statement of purpose, such as the Statement of Objects included in the Letters Patent or incorporation papers.

A brief explanation of the mission of the organization, and some examples of the kinds of projects being undertaken, would also be helpful. A response from Environment Canada can be expected within a few weeks; if there is urgency for qualifying (such as the case of an impending donation), include that information in the application letter.

photo by: John Mitchell

Qualifying as a Recipient Agency

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What penalties might apply?

The *Income Tax Act* includes a penalty for unapproved land use changes and dispositions (such as sales, transfers) of properties received as ecogifts under this program. A federal tax penalty equal to 50 percent of the fair market value of the property at the time of the change or disposition may be imposed on the recipient agency. The Canada Customs and Revenue Agency handles enforcement activities and the imposition of penalties, and Environment Canada staff are only involved if requested by CCRA.

Responsibilities of a recipient agency

Broadly speaking, organizations that accept gifts of ecologically sensitive lands have a responsibility to maintain the ecological and natural heritage values on these properties. This could include such general responsibilities as paying taxes (or applying for property tax exemption under the provincial Conservation Lands Tax Incentive Program), monitoring to ensure visitor safety and prevent abuse, carrying liability insurance, and so on. The Land Management chapter in the Ontario Nature Trust Alliance *Land Securement Manual* provides more detail on management practices (available from the Federation of Ontario Naturalists, 355 Lesmill Road, Don Mills, Ontario, M3B 2W8; 416-444-8419).

More specifically, organizations are not allowed to transfer or otherwise dispose of ecogift lands, or to make land use changes, without written approval from Environment Canada.

In practice, land transfers or changes in use that are consistent with the original objectives of the ecological gift are not likely to be problematic. For example, if the recipient agency wanted to transfer ownership of a donated property to another conservation organization, that would likely be allowed. So would a change in land use that enhanced or restored the conservation value of the property, such as an end to commercial logging. Changes that are required by law or for public safety are also exempted from the general requirements to maintain ecological values. For example, removal of dying trees overhanging a trail that posed a safety hazard would be allowed.

If there is any question about the appropriateness of a land disposition or use change, contact Environment Canada in advance. A letter outlining the proposed changes should be provided to the regional coordinator at the Ecological Gifts Program, Environmental Conservation Branch, Environment Canada, 4905 Dufferin Street, Downsview, Ontario, M3H 5T4. Environment Canada will write back with any concerns.

photo by: Doug Forder

Recipient agencies must maintain the ecological values of gifted properties, and not make changes to land use or ownership without prior written approval from Environment Canada.

Qualifying as a Recipient Agency

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Checklist for qualifying as a recipient agency

- ✓ Status as a registered charity, municipality, or Crown agency
- ✓ Inclusion of conservation purposes in Letters Patent for charity
- ✓ Letter of application sent to Environment Canada

Recipient agencies can make a donation easier by guiding donors through the process, and arranging necessary services such as surveys and appraisals.

What about conservation easements?

Most conservation easements donated under Ontario's *Conservation Land Act* are likely to be included under the Ecological Gifts Program. While it is still the responsibility of recipient agencies to enforce the terms of the conservation easement, it appears unlikely that the tax penalty provisions will apply to changes in use or ownership of easement properties. However, further interpretation on this point will be made by CCRA as cases arise, so recipient agencies would be well advised to check with Environment Canada staff on specific circumstances.

What help might donors expect?

One of the most important roles for a recipient agency is to guide donors through the donation and ecogift process.



Explain the steps to them so they know what to expect, and be ready to answer any questions they might have about the process. If necessary, refer donors to the Downsview office of Environment Canada for further information. Recipient agencies often also take the lead on providing such services as:

- Evaluating the ecological character of the property, and documenting how it meets the ecogift certification criteria;
- Arranging for any surveys or land use approvals such as severances needed to complete the property transfer;
- Arranging for an appraisal of fair market value of the donation;
- Coordinating the applications to certify the property and its fair market value.

Deciding who commissions and pays for surveys, appraisals, and other related costs may be a matter of policy for the recipient agency, or may be negotiable depending on the resources and commitment of the donor involved. The Ontario Nature Trust Alliance *Land Securement Manual* provides a valuable reference for the detailed steps involved at all stages of a land or conservation easement donation.

Certifying a Property as Ecologically Sensitive

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Each donation of a property or conservation easement must be individually certified as ecologically sensitive before it can be included under this program. In Ontario, Environment Canada's regional office carries out this certification, and issues a *Certificate for Donation of Ecologically Sensitive Land* which must accompany the donor's tax receipt.

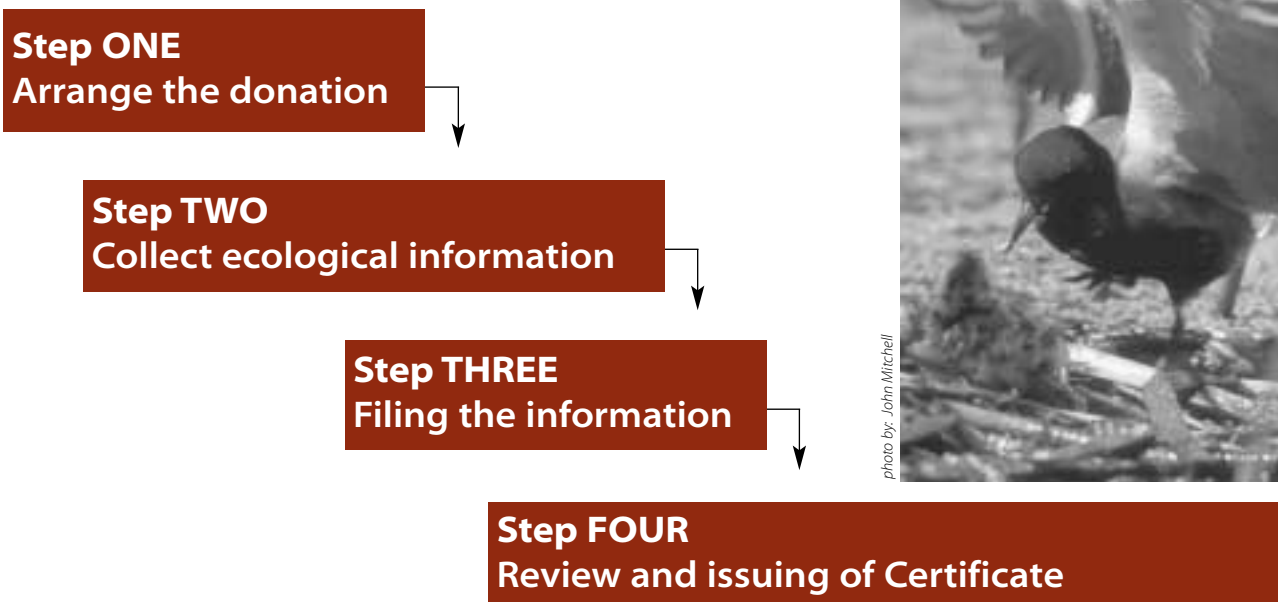
Not every donated property or conservation easement will qualify as an ecogift – to do so, a property must meet one or more of a set of criteria

developed specifically for Ontario. As shown on the list following (pages 8 and 9), in Ontario this definition includes 19 specific categories of qualified lands (the "A" list), and a further 11 general criteria for other lands that may qualify as ecologically sensitive (the "B" list).

The general definition of Ecologically Sensitive Lands is "areas or sites that presently, or in the future, could significantly contribute to the conservation of Canada's biodiversity and natural environmental heritage".

If the property under consideration meets one of the "A" list criteria – for example, if it is within a Provincially Significant Wetland – it will be qualified with minimal discussion. To qualify a property under the more general "B" list criteria, recipient agencies or donors are expected to provide a more detailed rationale for how it meets one or more of the criteria – in essence, to make the case for why it should qualify as ecologically sensitive.

The Certification Process



Certifying a Property as Ecologically Sensitive

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Definition of Ecologically Sensitive Lands: Ontario

A) Specific Categories of Qualified Lands

Lands, easements or covenants relative to such lands, which fall into one or more of the following categories shall be deemed to be ecologically sensitive lands in Ontario:

A1. Significant portions of the habitat of species determined to be endangered, threatened or vulnerable in Ontario, as specified in a recovery plan or other biological study;

A2. Areas designated as Provincially Significant Wetlands;

A3. Provincial or regional Areas of Natural and Scientific Interest;

A4. Designated Areas of Concern for biodiversity purposes as identified in Forest Management Plans;

A5. Areas qualifying for the Conservation Land Tax Reduction Program;

A6. Areas managed for wildlife habitat conservation purposes that qualify under the Managed Forest Tax Reduction Program;

A7. Areas promoting the conservation of natural heritage and biodiversity that are identified within a regional or watershed plan or strategy developed by a recognized conservation organization;

A8. Areas designated as a World Heritage Site for biodiversity conservation purposes, a core area of a UNESCO Biosphere Reserve, or a Wetland of International Importance under the Ramsar Convention;

A9. Areas of biodiversity significance identified in a Canadian Heritage Rivers Management Plan or Strategy;

A10. Areas designated in the Niagara Escarpment Plan as an Escarpment Protection Area or an Escarpment Natural Area;

A11. Areas designated as Natural Core, Natural Corridor, Sensitive Hydrological Feature, Regional

Recharge, Regional Discharge or Significant Landform within the Oak Ridges Moraine Strategy or Guidelines;

A12. Areas designated Core Area, Corridor or Restoration Area in the Lake Ontario Greenway Strategy;

A13. Areas designated for biodiversity conservation purposes within Management Plans or Strategies for the Trent-Severn or Rideau Waterways;

A14. Areas within a municipal official plan or zoning by-law under the Planning Act (Ontario) designated as an Environmentally Sensitive Area, Environmentally Significant Area, Environmental Protection Area, Restoration Area, Natural Heritage System or other designation for similar purposes that is compatible with the conservation of the biodiversity, ecological features and functions of the site;

A15. Areas within or adjacent to a Provincial Park, Provincial Park Reserve, Conservation Reserve, Conservation Area, Wilderness Area, Provincial Wildlife Area, National Wildlife Area, Migratory Bird Sanctuary, National Park, National Park Reserve or Ecological or Nature Reserve managed by a government or non-government agency;

A16. Municipal parks or other protected areas designated or managed for biodiversity conservation purposes;

A17. Areas identified as Carolinian Canada sites or alternate sites;

A18. Areas designated as Core Natural Area, Natural Area Buffer, Natural Area Link, or Valued Ecosystem Component in the National Capital Greenbelt Master Plan by the National Capital Commission; and

A19. Areas designated for biodiversity purposes by regional agencies such as the Niagara Parks Commission, St. Clair Parkway Commission, St. Lawrence Parks Commission and the Waterfront Regeneration Trust.

Certifying a Property as Ecologically Sensitive

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B) General Criteria for Other Ecologically Sensitive Lands

Lands, easements or covenants relative to such lands, which meet one or more of the following general criteria may also be considered to be ecologically sensitive lands in Ontario – subject to the approval of the federal Minister of the Environment or a person delegated by the Minister for this purpose. The term "significant" for the purposes below refers to definitions provided in Provincial Policy Statements.

B1. Significant habitats such as alvars, prairies, cliffs, Great Lakes coastal habitats, old growth forest areas, glacial relic communities and sites with enduring geological features that contribute to biodiversity;

B2. Areas of wildlife concentration such as bat caves, snake hibernacula, heronries, deer wintering yards and sites used by migratory water birds and other species for seasonal staging, feeding, breeding and like purposes;

B3. Areas identified, designated or protected as ecologically significant or ecologically important by a government or non-government local, provincial, national or international system or body;

B4. Significant water bodies, rivers, streams, shorelines, valleys, wetlands, groundwater recharge areas, headwaters and aquifers;

B5. Significant wildlife or fish habitats;

B6. Significant woodlands;

B7. Areas that have significant current or potential for enhanced ecological values through restoration, remediation, management or geographic proximity to other ecologically significant properties;

B8. Natural buffers and adjacent lands around areas identified under other ecologically sensitive lands categories or criteria that contribute to the conservation of biodiversity;

B9. Natural links or corridors between areas identified under other ecologically sensitive

lands categories or criteria that contribute to the conservation of biodiversity;

B10. Areas used for long-term scientific study or baseline and benchmark monitoring of biodiversity; and

B11. Areas that contribute to Canada's environmental heritage through the maintenance of the genetic diversity of species, ecosystem health, or landscape biodiversity, and other natural spaces of significance to the environment in which they are located.

The categories and criteria listed above, for the purposes of implementation of provisions in the *Income Tax Act* for ecological gifts, have been agreed to by representatives of the Governments of Ontario and Canada. This list and criteria may be further elaborated and amended by agreement between Environment Canada and the Ontario Ministry of Natural Resources.



photo by: Kathy Hunt

Certifying a Property as Ecologically Sensitive

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The Four-Step Certification Process

Step ONE Arrange the donation

Donors of natural lands and conservation easements may have a variety of motives, and may link up with a particular recipient agency through a variety of formal or informal programs. In most cases, at the stage when a landowner is seriously discussing a donation, the issue of tax treatment will arise, and the potential advantages of the Ecological Gifts Program will become apparent. These advantages will differ between individual and corporate taxpayers, but both can take part in the program.

Recipient agencies usually do two things at this point. The first is to advise the potential donors that they should seek independent legal and financial advice, to ensure that the implications of the donation in their particular tax situation will be understood. Providing background information on the

Ecological Gifts Program to those advisors can often be helpful, since many of them are not yet fully familiar with its provisions. The second is to arrange at least an exchange of letters between the recipient agency and the donors, confirming their commitment to move forward with the transfer of the land or easement. In some cases, donors may wish to move directly to a legal *Agreement of Purchase and Sale* with conditions attached as necessary.

Information to determine whether the property can be certified as ecologically sensitive under the Ecological Gifts Program can be filed at any stage in this process. It is not necessary to have a signed legal agreement before filing; on the other hand, information can also be filed up to three years after the property or conservation easement transfer has been registered.

Some donors will want confirmation that their property qualifies as ecologically sensitive as well as an appraised value before completing their donation; however, recipient agencies should seek at least a letter of commitment at an early stage.



photo by: Kathy Hunt

Certifying a Property as Ecologically Sensitive

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Three conditions must be met to qualify as a gift:



photo by: Kathy Hunt

- 1) **Property (which could include an easement) must be transferred by a donor to a registered charity or other qualified recipient;**
- 2) **The property must be given voluntarily;**
- 3) **The donor is transferring the property without expecting anything in return.**

What if the donor is an American citizen?

Recipient agencies in Ontario can work with U.S. conservation groups such as The Nature Conservancy to arrange donations of properties by U.S. citizens. One of the most experienced organizations with these transactions is The Nature Conservancy of Canada, who can be contacted at (519) 826-0068 for more information.

Is this really a gift?

In order to issue a donation receipt, a recipient agency must be sure that the property or conservation easement being accepted fully qualifies as a “gift”. This issue is addressed in Canada Customs and Revenue Agency’s publication RC 4108(E), which defines a gift as: “a voluntary transfer of property without valuable consideration... No benefit of any kind may be provided to the donor or to anyone designated by the donor as a result of a gift.”

This rule affects the Ecological Gifts Program in cases such as development lands, where a developer may be required to transfer lands to a municipality as part of an approval decision. Or a developer may propose to donate a woodlot or other natural lands to a conservation organization as part of an overall development plan. Neither of these would be “gifts” that qualify for a donation receipt, since in both cases the developer receives a significant consideration – i.e. a development approval – in return.

Municipalities and conservation authorities need to be especially careful about the circumstances under which the gifting of lands or conservation easements are offered, to ensure that donation receipts are not provided inappropriately. If there is any question about whether an individual transfer qualifies as a gift for tax purposes, contact CCRA for a ruling.

What other lands don’t qualify?

Ecogift donations must involve lands that are under private title, so the donation of leased rights to Crown lands, or of waterbodies, or shoreline properties with title in dispute, do not qualify. Properties which are being donated with the intent of resale to generate revenue for the purchase of other lands also are not included under this program.

A major category of excluded lands are those known as “inventory lands”, which are being held for resale or development with the purpose of making a profit, either through improvements to the property or simply by speculation. For tax purposes, inventory lands are treated differently than “capital property”, which is generally purchased either for long-term use in a business such as farming, or for personal use. In most cases, inventory lands are held by development corporations, and they will be identified as such in the corporation’s accounts. All inventory lands are currently excluded from the Ecological Gifts Program, regardless of their ecological significance, because they are not legally eligible to be considered capital property under the *Income Tax Act*.

Certifying a Property as Ecologically Sensitive

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Step TWO

Collect ecological information

What if only part of the property being donated is ecologically sensitive?

As long as a part of the donated property qualifies as an ecogift, the entire parcel being donated is included under this program.



photo by: John Mitchell

In cooperation with the donor, recipient agencies need to provide a brief synopsis of the ecological character of the proposed ecogift lands. This summary should include the following information:

- A short paragraph summarizing the property's ecological values, ecogifts criteria met and an assessment of the present condition of and threats to the site;
- The proportion of the total area of the property in wetland, forest, grassland, dune, or alvar; and whether shorelines, watercourses, Great Lakes coast or cliffs are present;
- A description of any significant species present;
- A description of any buildings or other permanent structures on the property;
- A listing of any reports or documents where the flora, fauna, fish, forestry, or other biodiversity of the site have been recorded – refer to these reports but do not submit copies unless requested;
- A listing of which criteria from the "A" or "B" list are met by the property under consideration, with a brief explanation of how each criteria is fulfilled; if field assessment is necessary to provide reliable information (especially to meet "B" criteria), that is the responsibility of the donor or recipient agency;
- Reference to any local, regional, national, international or other formal ranking of the significance of the site, and to the reports in which this ranking is noted;
- Any site enhancement or rehabilitation measures proposed to upgrade the ecological quality of the property;
- A map of the site, clearly indicating the area of the donation and where it is located.

Two pages of supporting information is often enough – see the sample on page 14 for typical information.

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Step THREE Filing the information

There are no formal application forms for this process. Instead, the recipient agency or donors should send the information to Ecological Gifts Program, Environmental Conservation Branch, Environment Canada, 4905 Dufferin Street, Downsview, Ontario, M3H 5T4. The following information is required – see the sample on page 14.

- Full name, address, and Social Insurance Number (SIN) for the donor;
- Name, address, and charitable tax number (if applicable) of the recipient agency;
- Legal description of the property under a *Land Titles Act* or Land Registry system (general location descriptions are not acceptable);
- Type of donation – title to the land or conservation easement;
- Area, in hectares, of the land area being donated; if an easement applies to only a portion of the site, record only the gifted area; if the property is not surveyed, an approximate area figure is acceptable;
- Confirmation that the recipient agency is qualified, either through reference to the DOE Circular of qualified recipient agencies, or by application as outlined in the previous section;
- A description of the current status of the donation (letter of intent, legal agreement, property transfer registered, etc.) and anticipated timing to completion;
- Attach the assessment of ecological character as outlined in Step Two and shown in the shaded area of the sample;
- Comment on why the donation is being made, and the recipient agency's intentions for its future management or enhancement, including whether a formal management plan is to be developed. Is changing the current use or ecological character or selling of all or part of the land proposed?

What if only part of the gifted property is to be retained?

In some circumstances, recipient agencies may wish to keep only the ecologically sensitive portions of a donated property (e.g. the wetland) and sell the remainder (e.g. active farmlands). These kinds of arrangements cannot be accommodated under the Ecological Gifts Program, since the sale of the surplus lands would trigger the penalty provisions and cause a loss of certified status of the recipient agency.

If only a part of the gifted property is to be retained, the donation must be done outside of the EGP.

What if the donor refuses to provide a SIN?

A few individual donors may be hesitant to provide their Social Insurance Number to a recipient agency. This information is required by the Canada Customs and Revenue Agency to provide legal proof of the linkage of the donation to their income tax submission. If donors prefer, they may provide their SIN directly to EGP staff in writing or by calling (416)739-4286. The *Certificate for Donation of Ecologically Sensitive Land* issued by Environment Canada is treated as a protected document under the *Income Tax Act* to protect the privacy of the donor. The identity of donors and the particulars of their gift are kept confidential by all parties to this process unless there is an agreement for publicity.

Certifying a Property as Ecologically Sensitive

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SAMPLE INFORMATION for DONATION of ECOLOGICALLY SENSITIVE LAND

Donor	Name	Jane Doe	SIN	555-555-555
	Address	123 Elm Street, Whatsitville, ON, 5N5 2T9		
Recipient	Name	Sludge Creek Land Trust		
	Address	22 Main Street, Whatsitville, ON, 5N5 2T0	Charitable Tax Number	Registered Charity # I56756h788-67

Legal Description Part of Lot 27, Concession 5, Municipality of Whatsit., Wherever Co. (the Smith property, 'Fred's Woods')

Type of Donation A Conservation Easement under the *Ontario Conservation Land Act*. **Area** 45 hectares

Certification of Recipient

Sludge Creek Land Trust is listed by Environment Canada on its list of qualified recipient agencies, as noted on Environment Canada's webpage.

Assessment of Ecological Character

The land in question is known as Fred's Woods. Approximately half the property is gently rolling to flat upland, with some limestone outcroppings and low cliffs. The remainder is floodplain/lowland with Sludge 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 species at risk. The lowland and much of the upland is part of the Sludge Creek/Fred's Woods ESA and the Ministry of Natural Resources has identified Sludge 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 grassland bird species. Threats include subdivision for housing, and upstream development and agriculture causing siltation of Sludge Creek.

Habitat and Site Characteristics

The property is approximately 80% forest, 10% wetland, 5% grassland & 5% residential/lawn.

FOREST: 25% Maple-Beech forest on dry to fresh soils, 20% Maple – White Ash forest on dry soils, 30% White Cedar – hardwood forest on moist soil, 5% White Pine Plantation on dry soils

WETLAND: 10% White Cedar Swamp

GRASSLAND: 5% old field on dry soils

LAWN/RESIDENTIAL 5% lawn

- ✓ Riverine/riparian zone ✓ Cliff
- ✗ No coastal, dune or alvar communities present

Species Present

See attached lists from local naturalist club and landowner.

Species at Risk Present

Hart's Tongue Fern (COSEWIC Species of Special Concern)

Structures on Property

One house, an old barn and a garden shed.

Ecological Information Sources

- Local office of the Ministry of Natural Resources - habitat for Brook Trout.
- Sludge Creek/Fred's Woods ESA report.
- The local naturalist club has also compiled species lists for this area.

Specific 'A' or 'B' Criteria Applicable to Property

- A-1 Hart's Tongue Fern – Federal Species of Special Concern. Noted by local naturalist club, reported to OMNR by Sludge Creek Land Trust
- A-5 Conservation Land Tax Incentive Program – landowner has successfully applied to CLTIP
- A-14 Sludge Creek/Fred's Woods ESA
- B-5 Fish Habitat for Brook Trout noted by OMNR (Mr. Pike, pers. comm)
- B-9 Part of forested corridor along Sludge Creek within ESA. Observations of use by deer, also noted in ESA report.

Local, Regional, Provincial, National or International ranking for site significance

ESA – municipal

Purpose of the Donation and Future Intentions

The donor wished to see her land protected from surrounding development, but still wanted to be able to sell it. She was also interested in the tax benefits of donation. The property is to be preserved, with only minimal logging or development of additional structures allowed. Please see attached 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.

Attached

Site map, species lists, draft conservation easement document.

Certifying a Property as Ecologically Sensitive

ONTARIO ECOGIFTS HANDBOOK

Step FOUR Review and issuing of Certificate

Review of the submitted materials and completion and signing of the *Certificate* usually takes four to six weeks, provided there are no major issues to be resolved. Special circumstances requiring faster turn-around can often be accommodated.

Certificates for Donation of Ecologically Sensitive Land are issued directly to the donor, with a copy to the recipient agency.

If the completion of an ecogift donation is delayed or terminated after the *Certificate* has been issued, recipient agencies or donors should notify Environment Canada staff in Downsview.



Checklist for certifying a property as ecologically sensitive



photo by: Kathy Hunt

- ✓ Property or easement donation qualifies as a gift for tax purposes
- ✓ Supporting information gathered on ecological character of property
- ✓ Information filed with Environment Canada
- ✓ Copy of *Certificate for Donation of Ecologically Sensitive Land* received
- ✓ Notify Environment Canada if unexpected delays occur

Certifying the Value of the Donation

ONTARIO ECOGIFTS HANDBOOK

Under new provisions introduced in Budget 2000, which reduced the amount of taxable capital gains associated with ecogifts, the appraised fair market value of all gifts under the program must now be certified by Environment Canada. Independent appraisals of donated lands or conservation easements are required from the donors or recipient agencies. These appraisals are then reviewed by an Appraisal Review Panel, who recommend a fair market value for each gift to Environment Canada.

In practice, this means a four-step process for donors and recipient agencies.

The Four-Step Certification of the Value Process

Step ONE

Commission an appraisal of fair market value



Step TWO

Submit appraisal for review and determination



Step THREE

Issuing of a Notice of Determination of Fair Market Value



Step FOUR

Statement of Fair Market Value and donation receipt

photo by: Doug Forder



Certifying the Value of the Donation

ONTARIO ECOGIFTS HANDBOOK

Step ONE

Commission an appraisal of fair market value

Either the donor or the recipient agency can commission an appraisal to establish the fair market value of the ecogift. The qualifications of the appraiser may differ, depending on the size and complexity of the gift. For gifts which have a value of less than \$25,000 and are straightforward to value, there is some flexibility in the choice of appraiser, provided they can establish their competence in this field. For all gifts over \$25,000, and those of a more complex nature, the appraiser must hold the designation of Accredited Appraiser Canadian Institute (AACI) or equivalent.

Training courses for ecogifts appraisers are being established, so appraisers being considered should be asked whether they have completed this training.

In most cases, a single appraisal is sufficient. For ecological gifts that have a high fair market value or that are particularly complex to value, a second valuation report may be necessary to assist in the review process. As the EGP gains experience with the appraisal review process, the circumstances requiring a second valuation will become more clear. If there is doubt about requirements for a particular gift, contact EGP staff in Downsview for advice.

In selecting and instructing an appraiser, the following factors should be incorporated:

- The Ecological Gifts Program has issued *Guidelines for Valuers*, which appraisers are required to follow. These *Guidelines* are available by calling Ontario EGP staff at (416) 739-5828 or (416) 739-4286, and they will soon be posted on the EGP webpage. The *Guidelines* address factors that appraisers should consider, and include a series of self-certification statements which appraisers must sign.
- Specify that the valuation report (i.e. the appraisal) for an ecological gift must conform with the Canadian Standards of Professional Appraisal Practice. These are available on-line at www.aicanada.org.
- Three copies of a complete narrative report (not a brief summary report) are required for submission to Environment Canada, with additional copies for the donor and the recipient agency. Photocopies are acceptable except for any photographs or detailed maps.
- Since all appraisal reports will be reviewed by one or more members of the Panel who are also qualified appraisers, instruct the appraiser to include clear information on the logic and reasoning employed to analyze the subject property and comparable sales, and to draw conclusions. Basic information that requires full analysis and discussion

Usually one appraisal is all that is needed. But a high-value gift, or one with out-of-the-ordinary factors such as valuable standing timber, might require a second valuation.

of their effects on the value conclusions should include the appraiser's analysis of highest and best use, zoning, Official Plan/Master Plans, restrictions that may already be registered on the property, and possible new restrictions under a conservation easement. Because the reviewer may not have the opportunity to visit the property or inspect the comparables, full descriptions are a must, along with exhibits (in colour where possible) such as maps, surveys, and photographs.

- Appraisers should be particularly cautioned that no unsupported assumptions that would have an impact on highest and best use will be permitted.

Certifying the Value of the Donation

ONTARIO ECOGIFTS HANDBOOK

Step TWO

Submit appraisal for review and determination

Applications are accepted at any time. However, if a tax receipt is desired before the end of a calendar year, applications should be submitted by mid-September.

Three colour copies of the completed appraisal should be submitted to the Ecological Gifts Program, Environmental Conservation Branch, Environment Canada, 4905 Dufferin Street, Downsview, Ontario, M3H 5T4, along with the required form,

Application for Appraisal Review and Determination, which must be signed by the donor. Electronic application forms are available from Environment Canada. Incomplete application forms may be returned for more information. See sample, page 20.

Step THREE

Issuing of a Notice of Determination of Fair Market Value

Following the review of the appraisal report by one or more members of the Appraisal Review Panel, the donors are sent a *Notice* informing them of the value which Environment Canada is prepared to certify. The recipient agency is sent a copy of this *Notice*. In many cases, this value will be the same as the value determined by the appraisal, but the Panel may choose to recommend a modified value or to request further information. In most cases, this process takes 30 to 90 days. All correspondence with recipient agencies and donors comes through Environment Canada's Downsview, Ontario office.

When the *Notice of Determination of Fair Market Value* is received, donors have three options, which they should exercise within 90 days:

- They can accept the value as determined, notify Environment Canada, and proceed to complete the donation process with the recipient agency.
- They can request in writing a Redetermination by the full Panel at their next scheduled meeting, to more fully consider particular factors or circumstances, including any further information the donor may provide such as a second appraisal. Donors are notified of the results of this process within 60 days after the meeting through a *Notice of Redetermination of Fair Market Value*.
- They can choose to withdraw from the Ecological Gifts Program, in which case the fair

market value on the *Notice* applies to that property in relation to all income tax purposes related to charitable donations and gifts for two years. Donors may re-enter into the EGP at any point within this two years at the same point at which they withdrew.

If a donor withdraws, the fair market value determined for the property remains fixed for two years.



photo by: David Hawke

Certifying the Value of the Donation

ONTARIO ECOGIFTS HANDBOOK

Step FOUR

Statement of Fair Market Value and donation receipt

Once the donors notify Environment Canada in writing that they accept the fair market value as determined (by signing and returning the *Notice*), and Environment Canada receives evidence that the gift has been completed, a certified *Statement of Fair Market Value* is issued to the donors, with a copy to the recipient agency. This *Statement* must accompany the donors' tax return, and is the basis for the issuing of a donation receipt by the recipient agency.

Evidence that the gift has been completed can be in several forms: i) a letter from the recipient agency confirming that the donation has been finalized and providing the specific date on which the land transfer or easement registration took place; ii) a copy of the signed transfer/deed or easement agreement; or iii) a copy of the registered transfer/deed.

The donation receipt issued by the recipient agency must indicate the date of property transfer or the registration date for a conservation easement, which is the effective date of the donation for tax purposes, even though some months may have passed before the actual receipt can be issued. A detailed list of requirements for official receipts from charities is included in CCRA's publication

RC 4108 (E), which is available on their webpage. Note that for property donations, this must also include a brief description of the property and the name and address of the appraiser. Municipalities should consult with their own financial staff and CCRA regarding specific requirements for their donation receipts.

If donors are still unsatisfied with the fair market value determined for their donation, they have one last resort following the completion of their ecogift donation and the issuance of their donation receipt. They have the right to appeal the fair market value of their gift to the *Tax Court of Canada*. In such cases, the dispute would be between the donors and CCRA, and recipient agencies are not directly involved.



Checklist for certifying the value of the donation

- ✓ Appraisal meets the required standards
- ✓ Application forms completed and signed by donors
- ✓ Three copies of appraisal submitted with application
- ✓ Donors review and accept value determined, and return signed *Notice*
- ✓ Evidence of completion of gift submitted
- ✓ *Statement* received from Environment Canada
- ✓ Donation receipt issued, citing date of property transfer

photo by: Kathy Hunt

A final word

The donation of a property of ecological significance, or the voluntary acceptance of the restrictions contained within a conservation easement, are choices that an increasing number of public-spirited Canadians are considering. The Ecological Gifts Program can make such a gift more rewarding for many donors – in addition to feeling good about preserving a cherished piece of land, they can maximize their tax benefits as well.

The processes outlined in this booklet are intended to ensure that all ecogifts are treated fairly, and that the public interest is protected. By understanding the processes, and helping to guide donors through them, recipient agencies can help the Ecological Gifts Program fulfill its potential as an important conservation tool in Ontario and across Canada.

Certifying the Value of the Donation

ONTARIO ECOGIFTS HANDBOOK



Environment Canada
Environnement Canada

EC Gift Identification Number _____ (EC use only)

APPLICATION FOR APPRAISAL REVIEW AND DETERMINATION

Ecological Sensitivity Certification Complete? (Y/N) Yes Date: May 15, 2001

Recipient Agency Certification Complete? (Y/N) Yes Date: October 2000

Inclusion of the Valuer Self-Certification Statement?(Y/N) Yes (see Valuation Guidelines for details)

By submitting an appraisal to Environment Canada for the purposes of the Appraisal Review and Determination Process the donor understands and consents to the following:

1. Environment Canada is authorized to contact the author(s) of the valuation report(s) and other related documents, as well as the recipient agency for clarification purposes.
2. A *Notice of Determination of Fair Market Value* will inform the donor(s) of the fair market value that the federal Minister of the Environment intends to issue a certificate regarding their ecological gift donation. In most cases, this Notice will be received by the donor(s) within 90 days of the date the appraisal is submitted to Environment Canada for review. Upon receipt of the Notice of Determination, donors will have 90 days to accept the value and finalize the donation with their recipient agency, request a full Panel Redetermination, or withdraw from the Program. If the donation is withdrawn the fair market value applies to that property for all income tax purposes related to charitable donations and gifts for a period of two years from the date of the *Notice of Determination of Fair Market Value*.
3. When a ecological gift donation is complete, donors have 90 days to appeal the fair market value of their gift to the Tax Court of Canada (and the Court of Québec if the gift is in Québec).
4. The same rules applies to the *Notice of Redetermination of Fair Market Value*.

Does the donor consent to the use of this appraisal for educational purposes if all direct references to the property and donor(s) are protected? (Y/N) Y

IDENTIFICATION OF DONOR

- NAME Jane Doe
- ADDRESS 123 Elm Street, Whatsitville
 - PROVINCE/TERRITORY Ontario
 - POSTAL CODE S8S 2T0
- TELEPHONE (519) 555-5555
- FAX
- EMAIL jdoe@whatsit.ca

IDENTIFICATION OF APPRAISER/VALUER

- NAME(S) Q. Walters
- COMPANY Q. Walters & Co. Appraisers
- ADDRESS 345 Hackberry Street, Suite 505, Thertown
 - PROVINCE/TERRITORY Ontario
 - POSTAL CODE SLS 2W7
- TELEPHONE (519) 045-8888
- FAX (519) 045-8887
- EMAIL qalt@wcoles.com
- HAS THE APPRAISER/VALUER ATTENDED AN AIC OR OÉAQ ECOLOGICAL GIFT TRAINING COURSE? (Y/N) Yes
- QUALIFICATIONS OF APPRAISER/VALUER AACI

APPRAISAL/VALUATION REPORT SUMMARY

- DATE OF APPRAISAL June 17, 2001
- ESTIMATED FAIR MARKET VALUE OF PROPERTY Before easement 175,000, after easement 120,000 easement value \$55,000
- OTHER EXPERTS INVOLVED IN APPRAISAL (I.E. TIMBER CRUISER)

SIGNATURE OF DONOR(S)

- DATE: June 28, 2001

- SIGNATURE(S) 





Canada

Tax Treatment of Ecogifts

ONTARIO ECOGIFTS HANDBOOK

Examples of Tax Benefits to Donors

The purpose of these examples is to demonstrate the basic income tax issues and consequences for gifts of land that qualify as ecologically sensitive, also known as ecogifts.

Two basic income tax considerations are addressed. The first is that the gift of land to qualified registered charities or government will result in a credit to individuals (and a deduction for corporations) which has the effect of reducing the income tax which would otherwise be payable.

The second consideration is the treatment of any capital gains. Until the federal 2000 Budget, taxpayers were obliged to include three-quarters of any capital gain arising from the disposition of land as taxable income, even if the land was transferred as a gift.

Subsequent Budget announcements reduced the inclusion rate for most capital gains to 50 per cent, and as of October 17, 2000 the inclusion rate for capital gains arising from ecogifts is one-quarter of the total capital gain.

Tax advantages are two-fold: donors are not restricted by the donation limits that apply to most gifts; and taxable capital gains are reduced.



photo by: Lesley Dunn

Note that these examples are preliminary and have been prepared without the benefit of having the *Income Tax Act* amendments that will implement the year 2000 Budget changes.

It will be important to re-examine any calculations in light of the actual legislation and regulations. Nevertheless, as the new policies are intended to be effective from the date of their announcement, these calculations have been completed using the capital gains inclusion rates in effect after October 17, 2000.

continued on reverse

Tax Treatment of Ecogifts

ONTARIO ECOGIFTS HANDBOOK

Gifts of Ecologically Sensitive Land

The following examples demonstrate the two major income tax advantages for the donor arising from a gift of ecologically sensitive land. First, the donor will be entitled to benefit from an income tax credit based upon the entire value of the gift, without being subject to the “donation limits” which otherwise generally apply to charitable gifts. In addition, the amount of the capital gain included in taxable income will be reduced. Scenarios 1 and 2 show typical donations of land or conservation easements involving capital gains. Scenario 3 demonstrates an ecogift without capital gains. For comparison, scenario 4 shows the calculation of donation limits and other rules applicable to donations and gifts not qualified as ecogifts.

For additional information on these changes see the Canada Customs and Revenue Agency publication *Gifts and Income Tax* issued for the year 2000, available at www.ccra-adrc.gc.ca. The income tax rates used in these calculations are the rates in effect for the year 2000.

Reference is also made in these materials to provincial income tax. The year 2000 Ontario income tax and credit calculations are based upon a percentage of taxable income calculated for federal purposes. The reductions to federal taxable income and tax payable arising from charitable donations and gifts of ecologically sensitive land will therefore flow through to reduce the provincial tax payable as well.

These scenarios are provided for illustration purposes only and should not be considered as financial or tax advice applicable to any particular individual. The precise calculation of income taxes payable by any individual taxpayer will vary from these generalized examples. It is essential that donors seek independent professional advice before proceeding with gifts of land.

Tax Treatment of Ecogifts

ONTARIO ECOGIFTS HANDBOOK

1 Gift of Ecologically Sensitive Land – with Capital Gains

As a result of the changes introduced in the year 2000, donors of ecogifts are only taxed on 25 percent of the capital gains associated with their donation. Unused tax credits can be carried forward to reduce future income taxes for up to five years after the year of the gift.

Scenario

About ten years ago Alan acquired a twenty hectare island on the same lake as his family cottage. It is covered in a magnificent mature forest and will qualify as ecologically sensitive. Alan is retired now on an annual income of \$50,000. He and his family have no plans to build on the island, but they are aware that the Island Lakes Land Trust is attempting to secure the permanent protection of the mature forests and undisturbed shorelines on the lake. Together with his family he decides that he will donate the island to the land trust.

The island was acquired at a cost of \$75,000 and its costs of acquisition were \$5,000, giving Alan a total Adjusted Cost Base (ACB) of \$80,000. The island is now valued at \$200,000. The tax treatment of the capital gain arising from the difference between the current fair market value and the original ACB is demonstrated below. In addition, the tax credit based upon the \$200,000 value of the gift will be available to eliminate or reduce Alan's federal and provincial income tax payable in the year of the gift and for up to five following years. The middle column in the table demonstrates the tax situation with no gift.

1 Ecologically Sensitive Land – with potential Capital Gains	Without Gift or Transfer of Property	With Gift of Ecologically Sensitive Land after October 17, 2000
Fair Market Value of Land	N/A	\$200,000
Adjusted Cost Base	N/A	\$80,000
Capital Gain	N/A	\$120,000
Taxable Capital Gain to be included in Net Income (25% for ecological gifts)	N/A	\$30,000
Employment and Other Income	\$50,000	\$50,000
Total Taxable Income*	\$50,000	\$80,000
Federal Income Tax	\$10,100	\$18,400
Federal non-refundable tax credit from gifts: (17% of first \$200 and 29% of the balance of the value of the gift. A gift value of just \$63,530 will generate a credit of \$18,400 – equivalent to federal tax otherwise payable in that year)	N/A	\$18,400
Donation Carry Forward (the portion of the value of the gift not utilized in the calculation of the credit above, will be available as a base for the calculation of credits for the next five years) (\$200,000 minus \$63,530)	N/A	\$136,470
Federal Tax payable in year of gift	\$10,100	- 0 -
Ontario Provincial Tax*	\$3,835	- 0 -
Total Income Tax Payable	\$13,935	- 0 -

* In order to focus upon the issues related to gifts of land - deductions and credits (such as the basic personal exemption) which would otherwise be included in the calculation of taxable income and taxes owing, have not been included in the simplified analyses shown in these charts.

Tax Treatment of Ecogifts

ONTARIO ECOGIFTS HANDBOOK

2

Gift of Conservation Easement – with Capital Gains

The *Income Tax Act* also recognizes that ecogifts may be in the form of conservation easements or covenants over land that will remain in private ownership. Particular issues arise in determining both the fair market value and the capital gain attributable to conservation easements and covenants.

As with a gift of land ownership, 25 percent of the capital gain on a conservation easement for ecologically sensitive land is to be included in taxable income. On a gift of land ownership, the capital gain can be determined by subtracting the original cost of acquisition plus allowable expenses (the Adjusted Cost Base) from the fair market value of the land at the time of the gift. The fair market value can be determined by an appraisal, based upon the sales of comparable properties in the market place.

For conservation easements, under section 118.1 (12) of the *Income Tax Act* the fair market value is established as the greater of “the amount by which the fair market value of the land is reduced by” the granting of the conservation easement, or the “fair market value otherwise determined”. The reference to reduced value of the land is an acknowledgement that a conservation easement restricting development, land use and resource exploitation will reduce the fair market value of a property. Where a fair market value for the conservation easement cannot be established by comparable sales or other traditional appraisal methods, the *Act* requires that the value of the conservation easement will be at least equal to the reduction in property value.

Changes to section 43 of the *Income Tax Act* established a formula for the allocation of a reasonable share of the Adjusted Cost Base to the conservation easement. The formula works with the fair market value of the property, the ACB of the property and the value of the conservation easement. The Adjusted Cost Base allocated to the easement is directly proportionate to the ratio between the easement value and the total property value.

For example, the donor of a conservation easement acquired land at a cost of \$160,000 (the ACB). The property is now appraised at \$400,000. An appraiser determines that the value of the land will be \$200,000 once the conservation easement is in place, so the conservation easement will be valued at (\$400,000 minus \$200,000) \$200,000. Since the conservation easement value is one-half of the current land value it should also be allocated one-half of the ACB, or \$80,000. Again, just 25 percent of the \$120,000 capital gain is included in the calculation of taxable income.

In this case, the tax treatment of this fictional conservation easement would be identical to the ecogift outlined in Table 1.

Tax Treatment of Ecogifts

ONTARIO ECOGIFTS HANDBOOK

3 Gift of Ecologically Sensitive Land – without Capital Gains

There will be circumstances in which there are no capital gains attached to the land. For example, land that has been very recently acquired through a purchase or through an estate may not have had any increase in value. There have also been cases in which supporters of conservation organizations have acquired property with the specific intent of immediately donating those lands for conservation purposes. In these circumstances, with no effective lapse of time between initial purchase and the subsequent donation, capital gains may not accrue. The donor will have the full benefit of the tax credit or deduction without offsetting capital gains tax liability.

Scenario

For illustration purposes, we can reconsider the case of Alan, described above in Table 1, maintaining all of the facts as constant, except for an assumption that Alan will be inheriting the twenty hectare island as part of an estate settlement.

In this example, we assume that capital gains taxes will have been paid in settling the estate, prior to the transfer of title to Alan. The fair market value of the island is still \$200,000. As illustrated below, Alan will have the benefit of a credit for income tax purposes based upon that entire fair market value, undiminished by offsetting capital gains taxation

Photo by: Doug Forster

3 Gift of Ecologically Sensitive Land – without Capital Gains	
Fair Market Value of Land	\$200,000
Adjusted Cost Base	\$200,000
Capital Gain and Taxable Capital Gain	\$0
Employment and Other Income	\$50,000
Total Taxable Income*	\$50,000
Federal Income Tax	\$10,100
Federal non-refundable tax credit from gifts: (17% of first \$200 and 29% of the balance of the value of the gift. A gift value of just \$34,900 will generate a credit of \$10,100 – equivalent to federal tax otherwise payable in that year)	\$10,100
Donation Carry Forward (the portion of the value of the gift not utilized in the calculation of the credit above, will be available as a base for the calculation of credits for the next five years) (\$200,000 minus \$34,900)	\$165,100
Federal and Provincial Income Tax Payable in year of gift	\$0

** In order to focus upon the issues related to gifts of land - deductions and credits (such as the basic personal exemption) which would otherwise be included in the calculation of taxable income and taxes owing, have not been included in the simplified analyses shown in these charts.*

Tax Treatment of Ecogifts

ONTARIO ECOGIFTS HANDBOOK

4 Donations and Gifts – not Qualified as Ecological Gifts

To understand the benefits to individual taxpayers of ecological gifts, it may be helpful to also consider the general rules applicable to other charitable donations.

Scenario



photo by: David Hawke

Consider the example of an individual, Leonard, who decides to assist a local charitable land trust with a gift of property that does have aesthetic, recreational and some natural heritage values, but does not qualify as ecologically sensitive land. In the twelve years that Leonard has owned the property it has increased in market value from the \$80,000 that he had originally paid to the current market value of \$200,000. As noted above, this transaction will require that Leonard include one-half of the capital gain in income for taxation purposes, even though the property is donated to a charitable land trust.

In addition, Leonard will have the benefit of a credit based upon the current value of his gift, but subject to the donation limits noted in the calculation below. For the purposes of this illustration we note that Leonard has \$50,000 of employment and other taxable income.

4.1 Calculate Taxable Income – to include taxable capital gain arising from gift	
Fair Market Value of Land	\$200,000
Adjusted Cost Base	\$80,000
Capital Gain (fair market value minus adjusted cost base)	\$120,000
Taxable Capital Gain (50% of capital gain)	\$60,000
Employment and Other Income	\$50,000
Total Taxable Income*	\$110,000

* In order to focus upon the issues related to gifts of land - deductions and credits (such as the basic personal exemption) which would otherwise be included in the calculation of taxable income and taxes owing, have not been included in the simplified analyses shown in these charts.

4.2 Calculate Non-refundable Tax Credit	
75% of Taxable Income (same as net income for purpose of this exercise)	\$82,500
Plus 25% of taxable capital gain	\$15,000
Donation Limit (\$82,500 plus \$15,000)	\$97,500
Maximum Federal non-refundable tax credit from gifts (17% of first \$200 and 29% on the balance of the Donation Limit)	\$28,251

Tax Treatment of Ecogifts

ONTARIO ECOGIFTS HANDBOOK

Looking ahead to the table titled “Calculation of Tax Owing” it is apparent that the total federal tax owing, before considering the impact of the gift credit will be just \$27,100. Although the potential credit amount at \$28,251 is greater than the taxes otherwise owing, there can be no balance in favour of the taxpayer since the credit is “non-refundable”. Taxes in the current year can simply be reduced to zero.

As shown in the “re-calculation” chart below, the taxpayer would need to use just \$93,535 of the value of the gift to have the Federal non-refundable tax credit equal to potential taxes at \$27,100. In fact the taxpayer can choose the amount of the donation to use in any of the applicable years and could choose a smaller donation amount and credit to be used in the first year. The portion of the donation that was not used to reduce current year tax calculation can be carried forward and used as the base for the calculation of credits against income tax in the next five years.

4.3 Re-calculation of Non-refundable Tax Credit and Donation Amount available for future years	
Donation Amount to be used in calculating credit in year of gift	\$93,535
Recalculation of Federal non-refundable tax credit from gifts (17% of first \$200 and 29% on the balance of the \$93,535 donation amount)	\$27,100
Donation Carry Forward (The portion of the value of the gift not utilized in the calculation of the credit above will be available as a base for the calculation of credits for the next five years) (\$200,000 minus \$93,535)	\$106,465

4.4 Calculation of Tax Owing	Without Gift (and without capital gain from disposition of property)	With Gift (and with corresponding capital gain inclusion and credit from gift)
Total Taxable Income	\$50,000	\$110,000
Federal Tax payable	\$10,100	\$27,100
Less Federal non-refundable tax credit	- 0 -	\$27,100
Federal Tax payable after deduction of non-refundable tax credit	\$10,100	- 0 -
Ontario Provincial Tax*	\$3,835	- 0 -
Total Income Tax Payable	\$13,935	- 0 -
Donation Carry Forward	N/A	\$106,465 See calculation in Table 4.3

* In order to focus upon the issues related to gifts of land - deductions and credits (such as the basic personal exemption) which would otherwise be included in the calculation of taxable income and taxes owing, have not been included in the simplified analyses shown in these charts.

Tax Treatment of Ecogifts

ONTARIO ECOGIFTS HANDBOOK

5 Treatment of Corporate Gifts of Land

The *Income Tax Act* also includes provisions for the recognition of gifts of ecologically sensitive lands by corporations. There is a reduction in the inclusion rate of deemed capital gains in income, similar to the reduced rate for individual taxpayers. For corporations the benefit is ultimately in the form of a deduction from taxable income, rather than a credit against tax owing.

An analysis of corporate gifts is beyond the scope of these examples. However, it is important to note that not all land will have the benefit of being treated as capital property. The property of land development companies, for example, may be treated as the “inventory” of their business and the entire amount of any net gain in the property value may be included in taxable income.

It is essential that taxpayers, whether corporate or individual, obtain professional legal and tax advice in considering gifts of land.

These scenarios were prepared by lawyer Paul Peterson, Toronto, Ontario,
March, 2001.