



## Ecological Gifts Program GUIDELINES FOR APPRAISALS

### Ecological Gifts and the Appraisal Review and Determination Process

Individuals and corporations who donate an ecological gift (or ecogift) to a qualified recipient are eligible for tax benefits under the *Income Tax Act*. Ecogifts are donations of land or partial interests in land that have been certified as ecologically sensitive. Partial interests may be in the form of conservation easements, covenants or servitudes.

Tax benefits are determined based on the fair market value of the gift<sup>1</sup> as certified by the federal Minister of the Environment. Environment Canada administers the Ecological Gifts Program across Canada in partnership with various provincial governments, environmental charities and other federal government departments. Contact information for Ecological Gifts Program coordinators is provided at the end of this document.

To determine the fair market value of a gift, either the donor or the recipient must provide an appraisal<sup>2</sup> to Environment Canada along with the donor's *Application for Appraisal Review and Determination*. The appraisal is reviewed by one or more qualified professionals from Environment Canada's Appraisal Review Panel. Following the review, the chair of the Panel recommends the fair market value to the Minister, who determines the value.

#### The Appraisal Review Panel

The Appraisal Review Panel reviews appraisals submitted by donors in support of donors' estimates of the fair market value of ecological gifts and makes recommendations to the Minister of the Environment about the fair market value. The Panel reviews each appraisal to determine:

- whether it meets the *Guidelines for Appraisals* contained in this document, and
- the basis for a recommendation to the Minister regarding the fair market value of the land or the easement, covenant or servitude and, in doing so, considers whether the analysis, opinions and conclusions in the appraisal under review are appropriate and reasonable and support the fair market value set out in the appraisal.

The *Guidelines for Appraisals* are intended to assist appraisers<sup>3</sup> in the preparation of ecogift appraisals, and include general requirements for valuation of all ecological gifts, regardless of their fair market value. The *Guidelines for Appraisals* provide a number of considerations that should be applied to different categories of gifts, general format requirements for appraisals, and contact details for program coordinators across Canada.

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<sup>1</sup> The *Income Tax Act* provides, in the definition of "total ecological gifts", that the value of the gift is based on its fair market value.

<sup>2</sup> In the context of the Ecological Gifts Program, the term appraisal includes all types of valuation reports.

<sup>3</sup> In the context of the Ecological Gifts Program, the term appraiser includes the entire range of valuation professionals, regardless of their area of expertise or professional designation.



## General Requirements for All Ecological Gifts

Appraisals for ecological gifts must conform with the requirements of the Canadian Uniform Standards of Professional Appraisal Practice (The Standards) or, in Québec, Les normes de pratique professionnelle des évaluateurs agréés (Les normes de pratique). All appraisers, whether or not they are members of the Appraisal Institute of Canada (AIC) or l'Ordre des évaluateurs agréés du Québec (OEAQ), are expected to be familiar with The Standards or, in Québec, with Les normes de pratique. A printed copy of The Standards is available by mail from the AIC. The document also can be downloaded free of charge from the AIC web site at [www.aicanada.org](http://www.aicanada.org). Les normes de pratique can be obtained from the OEAQ web site at [www.oeaq.qc.ca](http://www.oeaq.qc.ca).

### Arm's Length

All appraisals must be at arm's length from the parties to the transaction. For example, appraisals done by the donor, by a close friend, family member or business associate of the donor, or by a corporation or partnership in which the donor holds a significant interest are not acceptable. Similarly, appraisals done by the recipient are not acceptable.

### Definition of Fair Market Value

To meet *Income Tax Act* requirements, all appraisals must include a definition of fair market value. The following definition of market value is taken from The Standards:

*The most probable price which a property should bring in a competitive and open market as of the specified date under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus.*

*Implicit in this definition is the consummation of a sale as of the specified date and the passing of title from seller to buyer under conditions whereby:*

- (1) buyer and seller are typically motivated;*
- (2) both parties are well informed or well advised, and acting in what they consider their best interests;*
- (3) a reasonable time is allowed for exposure in the open market;*
- (4) payment is made in terms of cash in Canadian dollars or in terms of financial arrangements comparable thereto;*
- (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.*



The definition of fair market value in *Les normes de pratique* is also acceptable.

The courts have considered the meaning of “fair market value” and “market value”. For example, in *Carr v. Canada*,<sup>4</sup> the Tax Court of Canada stated:

Fair market value is not defined in the *[Income Tax] Act*. However, the judicial definition accepted by the courts in Canada is that of Cattanach J. in *Henderson Estate and Bank of New York v. M.N.R.*, (1973) 73 D.T.C. 5471 (F.C.T.D.), at page 5476:

The statute does not define the expression “fair market value”, but the expression has been defined in many different ways depending generally on the subject matter which the person seeking to define it had in mind. I do not think it necessary to attempt an exact definition of the expression as used in the statute other than to say that the words must be construed in accordance with the common understanding of them. That common understanding I take to mean the highest price an asset might reasonably be expected to bring if sold by the owner in the normal method applicable to the asset in question in the ordinary course of business in a market not exposed to any undue stresses and composed of willing buyers and sellers dealing at arm’s length and under no compulsion to buy or sell. I would add that the foregoing understanding as I have expressed it in a general way includes what I conceive to be the essential element which is an open and unrestricted market in which the price is hammered out between willing and informed buyers and sellers on the anvil of supply and demand. These definitions are equally applicable to “fair market value” and “market value” and it is doubtful if the use of the word “fair” adds anything to the words “market value”.

### **Unsupported Assumptions**

No unsupported assumptions will be permitted in the preparation of appraisals, including unsupported assumptions that have an impact on highest and best use. For example, a waterfront property can be valued to reflect a marina development, if that is the highest and best use, but the use cannot simply be assumed to be the highest and best use. Highest and best use is defined in *The Standards* as “that reasonably probable and legal use of vacant land or an improved property which is physically possible, appropriately supported, financially feasible, and that results in the highest value.” *Les normes de pratique* contains a similar definition of highest and best use.

### **Hypothetical Conditions**

Both *The Standards* and *Les normes de pratique* require appraisers to identify any hypothetical conditions included in the appraisal. However, hypothetical conditions are not permitted in appraisals done for the Ecological Gifts Program except where necessary for a reasonable analysis of the subject property. If an appraiser determines that a hypothetical condition must be included in the appraisal, the condition must relate to a potential use that is reasonably anticipated, can be demonstrated through traditional planning and valuation analysis to be a probable occurrence, and can be valued accordingly. For example, an appraiser may include a

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<sup>4</sup> [2004] T.C.J. No. 319.



hypothetical condition in an appraisal of an ecological gift where the hypothetical condition is necessary to value a proposed ecological gift comprised of a new lot that is not yet subdivided from a parent parcel or a conservation easement that is not yet registered.

### **Support for Conclusions**

The appraisal report must be straightforward and logical, so that the reasoning supporting the appraiser's analysis and conclusions is clear. Unsubstantiated opinions and unsupported conclusions are not acceptable. Appraisers should be fully informed about the status of title (for example, rights of way, other easements, covenants or servitudes) and provide commentary on the effect on use and value of any encumbrances, charges or notations on title. Adjustments must be based on an analysis of relevant market data, and should be supported by information on the reason for and magnitude of the adjustment.

Unsubstantiated opinions and unsupported conclusions are not acceptable.

The Appraisal Review and Determination Process should reflect, rather than establish or influence, the fair market value of ecological gifts. Appraisals therefore must address value in terms of established valuation principles. Previous determinations of fair market value by the Minister are not acceptable as a basis upon which an appraiser estimates the value of an ecological gift.

### **Categories of Ecological Gifts**

There are two categories of ecological gifts:

Category I: gifts that have a value of less than \$25,000 and are straightforward to value; and

Category II: all other ecological gifts.

#### **Category I**

Appraisals for Category I ecological gifts may be prepared using the Ecological Gifts Program's Summary Report,<sup>5</sup> available as a pre-printed form, accompanied by tables with factual and market evidence. A brief narrative discussion, however, must supplement the Ecological Gifts Program's Summary Report to provide the reasoning and support for the conclusions drawn, including the opinion of value. At a minimum, all of the points described in the *Guidelines for Appraisals* must be addressed.

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<sup>5</sup> For information about the Ecological Gifts Program Summary Report pilot program and to obtain the most up-to-date version of the Summary Reports, please contact Environment Canada's regional coordinator nearest to you (see: [www.cws-scf.ec.gc.ca/ecogifts/con\\_e.cfm](http://www.cws-scf.ec.gc.ca/ecogifts/con_e.cfm)).



If the gift is an easement, covenant or servitude, the Ecological Gifts Program's Summary Report must reflect the "before and after" values of the subject property, with an explanation that the value of the gift is the difference between the two.<sup>6</sup>

All Category I gifts must be straightforward to value. Although using the Ecological Gifts Program's Summary Report is not required, it should be possible to value a Category I gift using the Summary Report. If the valuation cannot be done using the Summary Report, such as where there is a lack of objective market evidence to support the opinion of fair market value, the gift is likely a Category II gift.

An example of a straightforward valuation is a valuation of land (fee simple) that relies on a direct comparison approach, where adequate market data is available. Gifts of partial interests in land that are complex to value, circumstances requiring the income and cost approach, and cases where there is poor market evidence are more likely to be Category II ecological gifts.

There is flexibility regarding the qualifications of an individual valuing an ecological gift in Category I; however the appraiser must be qualified and knowledgeable about market value. The appraisal must include a suitable description of the appraiser's expertise as evidence of his or her competence to express an opinion of value.

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 that licence.
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## Category II

Appraisals for Category II ecological gifts must include a full narrative report on the property being valued. If the gift is an easement, covenant or servitude, two reports may be necessary to reflect the "before and after" values of the subject property, with an explanation that the value of the gift is the difference between the two.

Appraisers of ecological gifts in this category must hold one of the designations listed in Schedule A. The designation must qualify the individual to value the specific ecological gift. For instance, an Accredited Appraiser Canadian Institute (AACI) may value all gifts, while a Canadian Residential Appraiser (CRA) may value only property types permitted by the CRA designation.

## Mandatory Format for All Appraisals

Three colour copies of the completed appraisal must be submitted to the Ecological Gifts Program. It is recommended that a Portable Document Format (PDF) version be submitted electronically together with the printed copies of the appraisal report.

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<sup>6</sup> Regarding the valuation of partial interests of land, the *Income Tax Act* provides that the fair market value of an ecological gift of a servitude, a covenant or an easement to which land is subject is the greater of "the amount by which the fair market value of the land is reduced by" granting the servitude, covenant or easement, and the "fair market value otherwise determined of the gift."



Appraisals may be prepared in a variety of formats. However, all appraisals submitted with an *Application for Appraisal Review and Determination* of the fair market value of an ecological gift—both Category I and II—must contain the following:

- **Letter of Transmittal:** The appraisal must be accompanied by a letter of transmittal from the appraiser. The letter must be printed on letterhead clearly indicating the name, address and type of business carried on by the appraiser and should contain the appraiser's conclusions, with references to attached exhibits and appendices.
- **Purpose and Scope:** The purpose of the appraisal is to establish the fair market value of the donation for the issuance of a tax receipt under the *Income Tax Act*. Valuations must be of the current fair market value of the land or interest in land in accordance with an acceptable definition of fair market value such as the definition from *The Standards*<sup>7</sup> or the definition from *Les normes de pratique*. A definition of fair market value and the effective date of the valuation must appear in the appraisal.

The appraiser must specify the scope of the appraisal by describing the interest being valued, including fee, partial interest, non-realty interests (such as mineral or timber values) or any other interests.

- **Property Description:** The following information must be included:
  - the name and address of the present owners of the land or interest in land being valued;
  - the location and complete legal description of the land or interest in land being valued and that of any comparable property;
  - a declaration of the interest or interests being valued, for example, whether it is fee simple, partial interest, non-realty interests (such as mineral or timber values) or any other interests; and
  - exhibits such as maps, sketches, surveys, and photographs (colour is highly recommended).
- **Copy of Title to Property:** A copy of the title to the property showing all registered encumbrances, charges or notations on title must be attached as an appendix to the appraisal report. If the appraisal report is for a proposed ecological gift comprised of a new lot that is not yet subdivided from a parent parcel or a conservation easement, covenant or servitude that is not yet registered, a copy of the title to the parent parcel or the property against which the partial interest is to be registered must be attached as an appendix to the appraisal report.
- **Conservation Easements, Covenants or Servitudes:** In the case of a conservation easement, covenant or servitude, a copy of the full document, clearly dated, with the property description, terms, restrictions and appendices must be provided. The document does not have to be registered at the time of the valuation but the appraiser must value the final version of the agreement. If any changes are made to the easement, covenant or servitude after the appraisal is completed, the new version must be clearly dated and the appraiser must identify and review the changes to determine if there is a change in value.

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<sup>7</sup> This definition is reproduced above.





If the easement, covenant or servitude does not cover the total property, a copy of the survey, plan or sketch and an explanation must be provided.

- **Basic Information:** A full analysis and discussion of basic information must be included. Basic information includes all aspects that govern the appraiser's analysis of highest and best use, zoning, official plans, as well as restrictions that are already registered on the property and new ones that would result from an easement, covenant or servitude. All conclusions must be well supported.
- **Valuation Process and Rationale:** An explanation and justification of the valuation approach used and an explanation of the steps taken in conducting the valuation, including analysis, consultations and references, and current market context, must be provided along with appropriate documentation to support the estimate of fair market value.
- **Certification Statement:** If the appraisal is completed by a member of the Appraisal Institute of Canada (AIC) or l'Ordre des évaluateurs agréés du Québec (OEAQ), he or she must sign and include the Certification Statement in Table 1 below. If the appraiser is not a member of the AIC or OEAQ, he or she must sign and include the Certification Statement in Table 2 below. These Certification Statements are to be included in their entirety. Appraisers must ensure that all statements in the appraisal are consistent with the statements in the Certification Statement.
- **Appraiser's Qualifications:** The appraisal should provide information about the appraiser, including the appraiser's market knowledge, experience and competence (education, professional qualifications, employment and business affiliations, and association with other appraisers or experts, or steps taken to ensure competency, such as an association with another appraiser or expert in such matters or commissioning a supplementary report). The report should also state whether the appraiser has completed the Ecological Gifts Program's Appraiser Training Workshop for the valuation of ecological gifts.

As noted above, in provinces that require a licence to establish the fair market value of real property, appraisers must have that licence and, for Category II ecological gifts, appraisers must have a professional designation from one of the professional associations listed in Schedule A.

- **Appraiser's Signature:** The appraiser must sign each of the three colour copies of the appraisal report with his or her name printed below the signature.
- **Currency:** The appraisal must specify the estimated fair market value assigned to the ecological gift in Canadian dollars.

Donors and recipients should consider following the procedures outlined for Category II ecological gifts when submitting applications involving complex valuations, regardless of the fair market value of the ecological gift.

Environment Canada strongly recommends that recipients issue the donation receipt after the *Statement of Fair Market Value* has been issued by Environment Canada.

## Timing of Appraisals

This general guidance about the timing of appraisals is intended to assist donors and appraisers in the preparation of appraisal reports for ecological gifts. However, these are guidelines only and the Appraisal Review Panel reserves the right not to accept an opinion of value in an appraisal that meets the guidance about the timing of the report, as noted below, but does not accurately reflect the market value of the ecological gift due to circumstances such as unusual volatility in the real property marketplace or changes to the legally permitted use of the land.

### Timing of Appraisals – Before the Gift is Made

Where the donor submits an *Application for Appraisal Review and Determination* to Environment Canada before making the donation of an ecological gift, the effective date of the appraisal must be no earlier than six months before the date that the donor submits the *Application for Appraisal Review and Determination*. This applies whether the donor submits an *Application for Appraisal Review and Determination* at the same time as an application to have the gift certified as ecologically sensitive or after receiving a *Certificate for Donation of Ecologically Sensitive Land* or, in Québec, a letter of intention for the *Visa pour dons de terrains ou de servitudes ayant une valeur écologique*.

If the effective date of the appraisal is more than six months before the date the donor submits an *Application for Appraisal Review and Determination* to Environment Canada, the appraiser who completed the appraisal must verify in writing that there has been

- no material change in the use of the subject property, and
- no material change to the market in the area of the subject property.

If the appraiser cannot verify both of these statements, either

- a new appraisal must be completed, or
- the appraiser who completed the original appraisal must update the original appraisal.

In these circumstances, the donor must submit with the *Application for Appraisal Review and Determination* either the new appraisal or the updated appraisal together with the original appraisal.

If an appraiser prepares an updated appraisal, the updated appraisal must report any changes in the status of the subject property, in market conditions, or in any respect affecting value since the prior appraisal, with analyses of these changes in developing an updated opinion. The updated appraisal must state clearly that it can only be relied upon by a reader familiar with the original appraisal report.

### Timing of Appraisals – After the Gift is Made

If a donor has already made a gift of land or of an easement, covenant or servitude, the donor has three years from the end of the taxation year in which the donor made the gift to make a request for a determination of the fair market value of an ecological gift. This allows a donor to take advantage of the tax benefits of an ecological gift after the gift has been made.



If the gift has been made, the donor must submit an appraisal along with an *Application for Appraisal Review and Determination* to Environment Canada. The effective date of the appraisal must be

- no more than six months before the date of the gift, or
- the date of the gift if the appraisal is completed after the date of the gift.

If the effective date of the appraisal is more than six months before the date of the gift, the appraisal may be used if the appraiser verifies in writing that, between the date of the original appraisal and the date of the gift, there was

- no material change in the use of the subject property, and
- no material change to the market in the area of the subject property.

If the appraiser cannot verify both of these statements, either

- a new appraisal must be completed, or
- the appraiser who completed the original appraisal must update the original appraisal.

In these circumstances, the donor must submit with the *Application for Appraisal Review and Determination* either the new appraisal or the updated appraisal together with the original appraisal.

If an appraiser prepares an updated appraisal, the updated appraisal must report any changes in the status of the subject property, in market conditions, or in any respect affecting value since the prior appraisal, with analyses of these changes in developing an updated opinion. The updated appraisal must state clearly that it can only be relied upon by a reader familiar with the original appraisal report.

## **For More Information**

For more information on the Ecological Gifts Program, contact the nearest regional coordinator. A complete list of contacts is found below. New publications, announcements and training workshops are posted on the Ecological Gifts Program's national web site at [www.cws-scf.ec.gc.ca/ecogifts](http://www.cws-scf.ec.gc.ca/ecogifts).



**Table 1**

## **Certification Statement**

### **Members of the Appraisal Institute of Canada (AIC) or Members of l'Ordre des évaluateurs agréés du Québec (OEAQ)**

I certify to the best of my knowledge and belief that:

1. the statements of fact contained in this report are true and correct;
2. the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal impartial, and unbiased professional analyses, opinions, and conclusions;
3. I have no (or the specified) present or prospective interest in the property that is the subject of this report, and no (or the specified) personal interest with respect to the parties involved;
4. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment;
5. my engagement in and compensation for this assignment were not contingent upon developing or reporting predetermined results, the amount of the value estimate, or a conclusion favouring the client;
6. my analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with The Standards or Les normes de pratique in Québec;
7. I have the knowledge and experience to complete the assignment competently;
8. no one provided significant professional assistance to the person(s) signing this report. (If there are exceptions, the name of each individual providing significant professional assistance and the extent of that assistance must be stated.);
9. as at the date of this report the undersigned has fulfilled the requirements of The Appraisal Institute of Canada Mandatory Recertification Program for designated members or a similar program offered by l'Ordre des évaluateurs agréés du Québec;
10. the undersigned personally inspected the subject property on (specify date property was personally inspected)  
or, the undersigned did not inspect the property;
11. based upon the data, analyses and conclusions contained herein, the market value of the interest in the property described, as at (insert date), is estimated at (insert value);
12. I acknowledge that Environment Canada can rely on the opinion, (regardless of who commissioned the report), and that the purpose of the report is to establish the fair market value of the donation for the issuance of a tax receipt under the *Income Tax Act*;
13. I acknowledge that Environment Canada can make additional copies of this report for review purposes;
14. signature and date of certification;
15. (if more than one person signs, this certification must clearly specify which individuals did and which individuals did not make a personal inspection of the appraised property.)



**Table 2**

### **Certification Statement**

#### **Non- members of the Appraisal Institute of Canada, Non-members of the Ordre des évaluateurs agréés in Québec**

I certify to the best of my knowledge and belief that:

1. the statements of fact contained in this report are true and correct;
2. the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal impartial, and unbiased professional analyses, opinions, and conclusions;
3. I have no present or prospective interest in the property that is the subject of this report, and no personal interest with respect to the parties involved;
4. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment;
5. my engagement in and compensation for this assignment were not contingent upon developing or reporting predetermined results, the amount of the value estimate, or a conclusion favouring the client;
6. my analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Canadian Uniform Standards of Professional Appraisal Practice (The Standards) or Les normes de pratique du Québec;
7. I have the knowledge and experience to complete the assignment competently;
8. no one provided significant professional assistance to the person signing this report. (If there are exceptions, the name and qualifications of each individual providing significant professional assistance and the extent of that assistance must be stated.);
9. where applicable, as at the date of this report the undersigned has fulfilled all mandatory recertification requirements of the professional association with whom the undersigned holds his or her designation;
10. the undersigned personally inspected the subject property on (specify date property was personally inspected);
11. based upon the data, analyses and conclusions contained herein, the market value of the interest in the property described, as at (insert date), is estimated at (insert value);
12. I acknowledge that Environment Canada can rely on the opinion, (regardless of who commissioned the report), and that the purpose of the report is to establish the fair market value of the donation for the issuance of a tax receipt under the *Income Tax Act*;
13. I acknowledge that Environment Canada can make additional copies of this report for review purposes;
14. signature and date of certification.



## Ecological Gifts Program National and Regional Coordinators

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## **Schedule A**

### **Acceptable Professional Associations and Designations**

#### American Society of Appraisers

- Accredited Senior Member (ASA) – Rural Property Appraisal Option

#### American Society of Farm Managers and Rural Appraisers

- Accredited Rural Appraiser (ARA)

#### American Appraisal Institute

- Member Appraisal Institute (MAI)
- Senior Residential Appraiser (SRA)

#### Appraisal Institute of Canada (AIC)

- Accredited Appraiser Canadian Institute (AACI)
- Canadian Residential Appraiser (CRA)

#### Canadian National Association of Real Estate Appraisers

- Designated Appraiser Residential (DAR)
- Designated Appraiser Commercial (DAC)

#### L'Ordre des évaluateurs agréés du Québec (OEAQ)

- Chartered Appraiser (C.App./EA)

#### Royal Institution of Chartered Surveyors

- Member Royal Institution of Chartered Surveyors (MRICS)  
Chartered Valuation Surveyor
- Fellow Royal Institution of Chartered Surveyors (FRICS)  
Chartered Valuation Surveyor