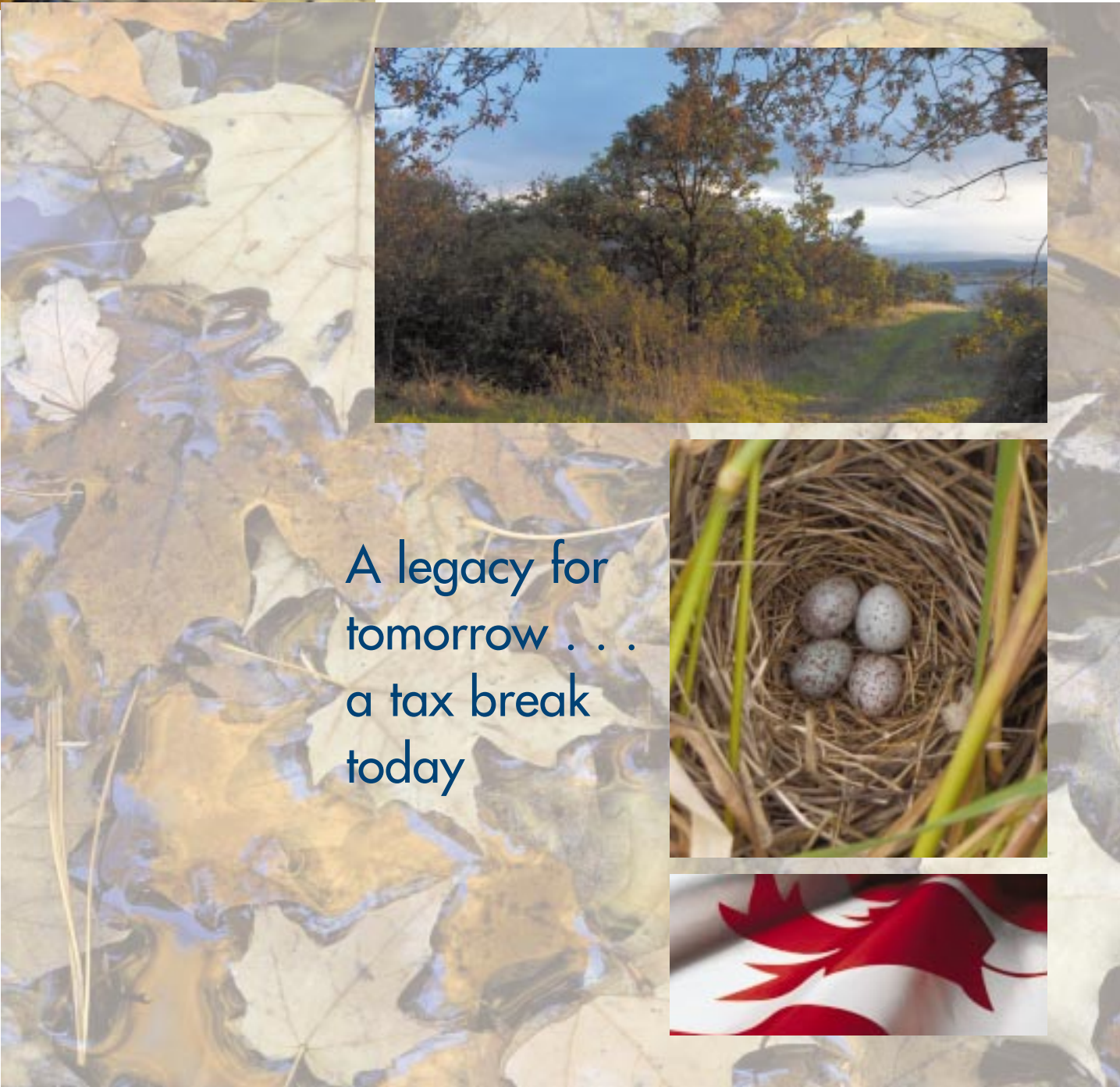


The Canadian ECOLOGICAL GIFTS PROGRAM HANDBOOK 2005



A legacy for
tomorrow . . .
a tax break
today



Environment
Canada

Environnement
Canada



© February 2005
ISBN
Cat No 0-662-32864-7

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Aussi disponible en français

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INTRODUCTION

About the Ecological Gifts Program

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

Canada's Ecological Gifts Program provides a way for Canadians with ecologically sensitive land to protect nature and leave a legacy for future generations. Made possible by the terms of the *Income Tax Act*, it offers significant tax benefits to landowners who donate land or a partial interest in land to a qualified recipient. Recipients ensure that the land's biodiversity and environmental heritage are conserved in perpetuity.

The Ecological Gifts Program is administered by Environment Canada in cooperation with dozens of partners, including other federal departments, provincial and municipal governments, and environmental non-government organizations. Thanks to this team approach and a dedication to continuously evolving and improving, the Program has become more successful each year.

Since its inception in 1995, hundreds of Canadians have donated ecological gifts valued at a total of more than 110 million dollars. Nearly half of these ecogifts contain habitats designated as having national, provincial, or regional importance, and many include rare or threatened habitats that are home to species at risk.

Ecogift donations and the motivations behind them are as varied as the Canadian landscape. They range from corporations in British Columbia donating covenants on forested land in the Gulf Islands to Atlantic communities pulling together to preserve treasured coastal habitat. What all donors share, however, is the comfort of knowing that their cherished piece of nature will be cared for in the future.



Arthur Holbrook

A conservation easement, covenant, or servitude is a "partial interest in land." Such agreements are made when landowners wish to protect their land from certain activities in perpetuity, whether or not they continue to own it.

For example, a farming family has cultivated the upland areas of their property for decades, but left wetlands and some surrounding areas wild—treasuring these areas as places to explore nature and witness the hatching of ducklings each spring.

By putting a conservation easement on the title to their land, the family could permanently protect their wetlands from disturbances such as development, drainage, or cultivation, yet continue to work the rest of the property as they always have.



INTRODUCTION

Income tax benefits



Most people who donate to the Ecological Gifts Program do not do so for financial reasons. However, as an incentive to take part—and to assist those who could not otherwise afford to donate—the *Income Tax Act* provides favourable income-tax treatment for gifts of ecologically sensitive land and partial interests in land. This includes the provision of a non-refundable tax credit or deduction to donors, and a reduction in the taxable capital gain realized on the disposition of the property.

More detailed information on the tax benefits of the Ecological Gifts Program can be found in *Donation and Income Tax Scenarios*, a government publication available through the National Secretariat and regional offices of Environment Canada. Please note that this handbook and the tax scenarios publication are provided for general information only. All donors are strongly advised to obtain independent tax and legal advice when considering donating an ecological gift.



Judith Hammond

Corporate donors may deduct the amount of their ecogift directly from their taxable income, while the value of an individual's ecogift is converted to a non-refundable tax credit. The tax credit is calculated by applying a rate of 16 per cent to the first \$200 of the donor's total gifts for the year and 29 per cent to the balance. In most provinces, a reduction in federal tax payable will also reduce provincial tax. Unlike other charitable gifts, there is no limit to the total value of ecogift donations eligible for the deduction or credit in a given year. Further, any unused portion of the donor's gifts may be carried forward up to five years.

Donors of ecological gifts also receive a reduction in the taxable capital gain realized on the disposition of the property. Donors who dispose of capital property, such as land, will realize a capital gain—a portion of which is taxable—where the proceeds of disposition exceed the property's adjusted cost base (usually the original purchase price of the land). This is generally the amount by which capital property appreciates in value while it is in the owner's possession. While for most gifts the taxable portion is 50 per cent of the capital gain, in the case of an ecological gift it is only 25 per cent.

Donors can also reduce their capital gain by lowering the designated amount of the gift to somewhere between its fair market value and its adjusted cost base. This designated amount will also be used for the purpose of calculating the tax benefit.

To benefit from these provisions, the donor must include the following in his or her income-tax return: a *Certificate for Donation of Ecologically Sensitive Land* (or, in Quebec, a *Visa pour dons de terrains ou de servitudes ayant une valeur écologique*); a *Statement of Fair Market Value*; and an official donation receipt from the recipient. These requirements are explained further in the Ecological Gifts Program Process section of this handbook.

INTRODUCTION

About this handbook

The Canadian Ecological Gifts Program Handbook 2005 is intended for use by donors, recipients, and others interested in the Ecological Gifts Program. The handbook describes the general requirements and responsibilities of both donors and recipients, as well as the steps involved in making an ecogift donation—from arranging the donation to determining its fair market value. The cover pocket contains information specific to certain regions of the country, including lists of contacts, certification authorities, certification criteria, and qualified environmental charities. References and a glossary of terms are found in the appendices.

Contacts for more information

Visit the Ecological Gifts Program (EGP) Web page at www.cws-scf.ec.gc.ca/ecogifts for more information. For personal assistance, or to request printed copies of other EGP publications—including the donor brochure, *Guidelines for Appraisals*, *Confirmation that Ecogifts are Eligible for Split-Receipting*, *Application Guide*, *Engaging an Appraiser*, *Retaining the Right to Use Land Donated as an Ecological Gift*, *Donation and Income Tax Scenarios*, and guidelines for lawyers, accountants, and gift planners—contact the Program’s National Secretariat at 1-800-668-6767 or one of its regional offices at the general numbers listed below. Coordinators’ names, mailing addresses, fax numbers and e-mail addresses are provided in the inserts in the cover pocket of this handbook.

- British Columbia/Yukon: (604) 940-4700
- N.W.T./Nunavut: (867) 669-4760
- Alberta: (780) 951-8826
- Saskatchewan: (306) 780-5322
- Manitoba: (204) 983-5264
- Ontario: (416) 739-5828/4286
- Quebec: (418) 649-6857
- Atlantic Provinces: (506) 364-5044

For more information on the *Income Tax Act* or the *Quebec Taxation Act*, donors should consult their tax and legal advisors. They may also visit the Canada Revenue Agency (CRA) Web site at www.cra-arc.gc.ca or contact the Agency directly at 1-800-267-6999 (the CRA hotline for registered charities is 1-800-267-2384). The Quebec Ministère du Revenu can be reached at 1-800-267-6299, and has a site on the Web at www.revenu.gouv.qc.ca.

Judith Hammond

ECOLOGICAL GIFTS DONORS

What constitutes a gift?



Any individual or corporate landowner may donate land or a partial interest in land through the Ecological Gifts Program. Ecogifts must be made in perpetuity.

Inventory land

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

Owners of inventory land may make donations under the Ecological Gifts Program, and are still eligible to have the full value of their gift recognized as a charitable donation. However, such gifts are not subject to the same tax benefits as gifts of capital property. All profits derived from the disposition of inventory land must be included in the taxpayer's income for the year, while only a portion of the capital gain must be included for capital property.

In order for an official donation receipt to be issued, the donation must fully qualify as a gift under Canadian tax law. For a donation to be considered a gift, the following conditions must be met:

- the donor transfers ownership of property to a qualified recipient;
- the transfer is voluntary; and
- no benefit is provided to the donor or a person selected by the donor.

For example, a farmer living at the edge of town decides to develop a portion of her property, and as a condition of approval must donate part of the land for parkland. This donation would not qualify as a gift, because the landowner receives a benefit—that is, development approval—in return. The donation was also not voluntary.

If there is any question about whether a proposed ecogift qualifies as a gift for tax purposes, donors should contact their tax and legal advisors. The Minister of the Environment does not make any statement concerning whether or not the transfer of the land or the partial interest in land qualifies as a gift under the *Income Tax Act*.

Split-Receipting

Finance Canada has released proposed amendments to the *Income Tax Act* that include provisions for split-receipting.

These provisions allow a donor to give a gift to a qualified recipient when the gift is only a portion of the entire transaction. In return, the donor receives a receipt for income-tax purposes for the value of the property transferred to the recipient, minus the value of the item or benefit given to the donor in return.

Although the proposed amendments to the Act were not yet in force at the time this handbook was prepared, split-receipting is now generally permitted if the following conditions are met:

- the donor voluntarily transfers ownership of the property to a qualified recipient;
- there is clear intent by the donor to enrich the recipient;
- the value of the property and the value of any advantage obtained by the donor in making the gift have been clearly ascertained; and
- the value of the advantage does not exceed 80 per cent of the fair market value of the transferred property.

ECOLOGICAL GIFTS DONORS

What lands qualify as ecologically sensitive?

A wide range of lands qualify as ecologically sensitive—from cliffs and forests to shorelines, wetlands, and grasslands. Each donation of land or a partial interest in land must be certified as ecologically sensitive before it can be included under the Ecological Gifts Program. This certification is carried out by the federal Minister of the Environment or a designated authority. Designated authorities range from provincial governments to environmental charities.

Ecologically sensitive lands are areas or sites that currently or could, at some point in the future, contribute significantly to the conservation of Canada's biodiversity and environmental heritage. Some provinces, including Ontario, Quebec, New Brunswick, and Prince Edward Island, have more precise definitions of ecologically sensitive lands (see inserts in cover pocket).

Where ecologically sensitive land is a significant part of a larger parcel of land, the entire property donated usually qualifies as an ecogift.



S. Kressman

National criteria for ecological sensitivity

Both the existing environmental values of the land and those that may result from conservation initiatives are included in the consideration of what is ecologically sensitive. The following national criteria currently apply:

- *areas identified, designated, or protected by a local, provincial, territorial, national, or international system or body as ecologically significant or ecologically important;*
- *natural spaces of significance to the environment in which they are located;*
- *sites that have significant current ecological value or potential for enhanced ecological value as a result of their proximity to other significant properties;*
- *municipal or rural lands that are zoned or designated for biodiversity objectives;*
- *natural buffers around environmentally sensitive areas such as water bodies, streams, or wetlands; and*
- *areas or sites that contribute to the maintenance of biodiversity or Canada's environmental heritage.*



ECOLOGICAL GIFTS DONORS

Donation options



Although many ecogifts are outright donations of land with no conditions attached (sometimes called fee-simple donations), making a gift of property does not necessarily mean severing the connection donors have with their land. There are options available that allow donors and recipients to tailor their arrangements to suit their particular needs.

If the donor is a citizen of the United States

Several environmental non-government organizations facilitate donations of land in Canada by citizens of the United States. Contact your regional Ecological Gifts Program coordinator or a qualified recipient for more information.



Luc Robillard

A conservation easement, covenant, or servitude is a legal agreement that is registered on title and that protects a property's conservation value by permanently placing terms and conditions on its use that are determined by the donor. It can place limitations on subdividing, the number and location of structures, and the types of land-use activities that can take place. Under the terms of the agreement, the donor continues to own the land and may live on it, sell it, or pass it on to heirs. The recipient ensures that the restrictions put on the property are followed in the future, regardless of who owns the land. This type of agreement makes up over half of all ecogifts to date.

Another option may be for the property owner to donate the land to a qualified recipient, while retaining the right to use the land for a period of time. In common-law jurisdictions, a donor can give away a remainder interest in land but retain a life interest—that is, the right of the donor (or someone else named by the donor) to live on the land for life. In Quebec, donors who give away land for conservation purposes can

Donor highlights

- ✓ Does the donor own the land in fee simple?
- ✓ Is the donation a gift, as defined under Canadian tax law?
- ✓ Does the gift meet the definition of ecologically sensitive land?
- ✓ Has the donor decided on a donation option?

retain a right of usufruct, use, or superficies—each of which allows ongoing use of the donated land. For information, see the Ecological Gifts Program fact sheet *Retaining the Right to Use Land Donated as an Ecological Gift*.

Since the tax implications of donating a conservation easement, covenant, or servitude or a life estate are dependent on the facts of a particular situation, donors should consult with a tax professional for more information on such arrangements.

ECOLOGICAL GIFTS RECIPIENTS

Who can receive ecological gifts?

Ecological gifts may be donated to eligible environmental charities, as well as to federal, provincial, and territorial governments, Canadian municipalities, and municipal or public bodies that perform a function of government. Most ecogifts to date have been donated to nature conservation charities, such as local land trusts and provincial or national conservation groups. Ecogift donations made to private foundations are not eligible for the tax benefits of reduced capital gains.

Federal, provincial, and territorial governments, Canadian municipalities, and municipal or public bodies that perform a function of government are automatically qualified to receive ecogifts.

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

- have registered charity status with the Canada Revenue Agency and maintain this status from year to year;
- have as one of its primary purposes “the conservation and protection of Canada’s environmental heritage” or some similar statement of intent acceptable to the federal Minister of the Environment or a designated authority; and,
- apply to Environment Canada for eligibility.

Environment Canada updates a list of more than 160 eligible environmental charities across Canada on its Ecological Gifts Program Web page at www.cws-sfc.ec.gc.ca/ecogifts (recent lists are also included in the inserts of this handbook).



Russ Amy

How a charity becomes eligible

To apply for eligibility, a registered charity must send a request in writing to: National Coordinator, Ecological Gifts Program, Canadian Wildlife Service, Environment Canada, 351 St. Joseph Blvd., Gatineau, Quebec, K1A 0H3, fax (819) 953-3575. The letter must include:

- *full contact details (business address, e-mail, fax, and phone);*
- *the organization’s Business Number and Charitable Registration Number; and*
- *a copy of the organization’s full statement of purpose, such as the statement of objects included in the letters patent or incorporation papers.*

An explanation of the mission of the organization and some examples of the kinds of projects it undertakes are also recommended. A response from Environment Canada can be expected within six weeks. If the request is urgent, include that information in the letter and the process may be expedited.

ECOLOGICAL GIFTS RECIPIENTS

Responsibilities of a recipient



The recipient is responsible for issuing an official donation receipt when the gift has been completed, and for ensuring that the biodiversity and environmental heritage features of the donated property are maintained. Recipients may also assist donors in other ways.



Eric Dresser

There is no fee to certify land as an ecogift, but there are costs associated with donating land and preparing the necessary documentation. Deciding who commissions and pays for surveys, appraisals, and other related costs may be a matter of policy for the recipient, or may be negotiable between the donor and recipient depending on the resources available.

Assisting donors

It is helpful for recipients to understand the steps involved in the Ecological Gifts Program process, so that they can answer questions from donors. Recipients should not offer tax or legal advice, but rather should strongly advise potential donors to seek independent counsel to ensure that all the implications of the donation are clearly understood. Recipients sometimes take the lead on:

- initially assessing the ecological character of the potential gift;
- arranging for an appraisal of the fair market value of the donation; and
- coordinating the certification processes.

Maintaining the property

Ecogift donations must be protected in perpetuity. Recipients of fee-simple donations of ecologically sensitive lands have a responsibility, as owners of the land, to maintain the biodiversity and environmental heritage of these properties. This responsibility is shared by the owner and recipient in cases where the donation is a partial interest in land, depending on the nature of the agreement.

Maintaining the property could include such general responsibilities as paying property taxes, ensuring visitor safety, identifying and remediating environmental hazards, and carrying liability insurance. It also often involves preparing a management plan, setting up a stewardship program, and initiating a monitoring regime. In the case of a partial interest in land, responsibilities include ensuring that the easement, covenant, or servitude is enforced, and that a baseline report and monitoring strategy are created.

Before accepting an ecogift, a recipient should be aware of all responsibilities, and ensure that it has the financial and human resources to carry them out over the long term.

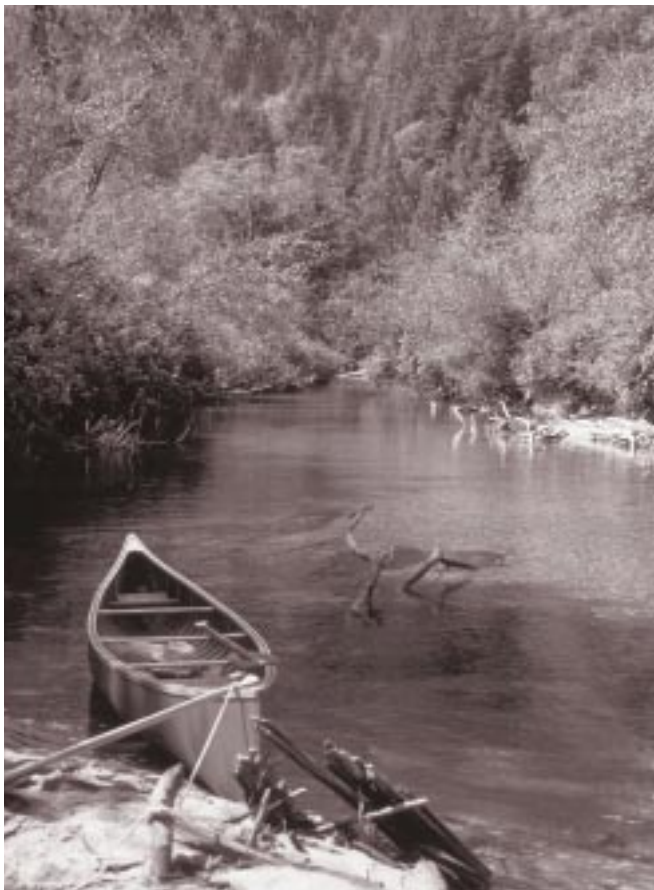
ECOLOGICAL GIFTS RECIPIENTS

What safeguards are there?

As a disincentive to unauthorized alterations to properties donated under the Program, a federal tax equal to 50 per cent of the current fair market value of the land may be imposed on charitable and municipal recipients for land-use changes (even those perceived as beneficial) and dispositions made without prior written authorization from Environment Canada or a designated certification authority. In some cases, this tax would also be triggered if a recipient wished to keep only the ecologically sensitive portions of a donated property and sell the remainder.

Land transfers or changes in use that are consistent with the original objectives of the ecological gift are likely to be authorized. Examples might include wanting to transfer ownership of a donated property to another conservation organization that is eligible to receive ecogifts or to undertake a change in land-use that would enhance or restore the conservation value of the property.

To seek authorization, recipients should write to the Ecological Gifts Program office in their region. Tax-related questions should be directed to the Canada Revenue Agency, which is responsible for implementing these provisions under the Income Tax Act.



J.P. Foley



THE ECOLOGICAL GIFTS PROGRAM PROCESS

An overview



Ecogifts are donations with preferential income-tax treatment, and therefore have specific requirements above and beyond other kinds of donations. In order for an ecogift to meet these requirements, the federal Minister of the Environment must certify the property as ecologically sensitive, approve the recipient to receive the ecological gift, and certify the fair market value of the donation.

There are a number of steps involved in this process, including: arranging the donation; preparing and filing information on ecological sensitivity; and determining the fair market value of the donation.

Once this process has been completed successfully, the donor will receive:

- a *Certificate for Donation of Ecologically Sensitive Land* (or, in Quebec, a *Visa pour dons de terrains ou de servitudes ayant une valeur écologique*);
- a *Statement of Fair Market Value*; and
- an official donation receipt for the gift from the recipient.

All three of these must be included with the donor's income-tax return.

It can take several months to arrange a donation, and up to six months or longer to receive the necessary certifications. As a result, donors are advised to apply to the Ecological Gifts Program for a determination of fair market value as early in the year as possible—mid-September at the latest—if they wish to be certain of the value of their gift before completing their income-tax return for the same year. The donation receipt can be used beginning in the year the donation was made.

Program coordinators are available to help at any time with a variety of aspects of the Ecological Gifts Program process.



Arthur Holbrook

THE ECOLOGICAL GIFTS PROGRAM PROCESS

Arranging a donation

The Ecological Gifts Program process may be initiated by the donor or the recipient (with the donor's written consent). During this stage, the two parties should clarify their expectations about the proposed transfer of land or partial interest in land, and investigate the options available. This may include determining who will pay for surveys, appraisals, and legal costs associated with the donation. Both the donor and recipient should seek independent legal and tax advice to ensure that they clearly understand the implications of the donation.



Arthur Holbrook

Highlights: Arranging a donation

- ✓ Parties are satisfied that the donation is a gift and that the recipient is eligible.
- ✓ Parties have clarified expectations and investigated donation options.
- ✓ Parties have sought independent legal and tax advice.
- ✓ Parties have reached a tentative agreement.
- ✓ The donor has applied to the Ecological Gifts Program.



THE ECOLOGICAL GIFTS PROGRAM PROCESS

Preparing and filing information on ecological sensitivity



The first step in the ecological gifts certification process is to provide the information needed to determine whether the property qualifies as ecologically sensitive, as defined by national, provincial, or territorial criteria (see page 7 for more information).

There is no formal application form. Instead the donor, often in cooperation with the recipient, collects the following information and sends it to the regional Ecological Gifts Program coordinator or a designated certification authority for review (see Appendix 3 for an example of the type of information that should be filed when applying for a *Certificate for Donation of Ecologically Sensitive Land*):

- the full name and address of the donor, and correspondence indicating the donor's willingness to take part in the Program;
- the name, address, and charitable registration number (if applicable) of the recipient, and confirmation that the recipient is qualified to receive ecological gifts (registered charities must be deemed eligible by Environment Canada);
- the complete legal description of the property under a land titles act or land registry system (general descriptions are not acceptable);
- a copy of the title to the property that is to be the subject of the ecological gift;
- the type of donation—fee simple or conservation easement, covenant, or servitude—and, in the case of a partial interest in land, a final or dated copy of the agreement (the terms of which must regard and protect the ecologically sensitive features of the land);



Judith Hammond

THE ECOLOGICAL GIFTS PROGRAM PROCESS

- the surveyed area (or approximate area, if not surveyed), in hectares or acres, of the land being donated (if an easement applies to only a portion of the site, record both the gifted and total areas);
- a brief assessment (approximately two pages) of the ecological character of the proposed ecogift lands, including relevant provincial or territorial criteria (see box below); and
- information on the current status of the donation, why it is being made, the anticipated timing of completion, and the recipient's intentions for the future management or enhancement of the land.

Some provinces have different requirements—for more information, contact a regional Ecological Gifts Program coordinator.



Blair Hammond

Assessing ecological character

The brief assessment of the ecological character of the proposed ecological gift lands should demonstrate that national and, if applicable, provincial/territorial criteria have been met. If the proposed donation is a covenant, easement, or servitude, applicants may provide a copy of the baseline report in support of their request for certification, as these reports typically contain the information needed to determine whether a property qualifies as ecologically sensitive.

The following information should be included in the assessment:

- *a summary of the property's ecological values and ecogift criteria, and an assessment of the present condition of and threats to the site;*
- *the proportion of the total area of the property that is wetland, forest, grassland, desert, coastal, or mountainous, and whether there are water courses, shorelines, cliffs, dunes, or alvar communities present;*
- *a description of any significant species known to be present;*
- *a description of any buildings or other permanent structures on the property;*
- *a list of any reports or documents in which the diversity of the flora or fauna on the site has been described;*
- *reference to any local, regional, national, international, or other formal ranking of the significance of the site, and to the reports in which this ranking is noted;*
- *any site enhancement or rehabilitation measures proposed to upgrade the ecological quality of the property; and*
- *maps and aerial photographs of the site delineating the area and location of the donation.*

THE ECOLOGICAL GIFTS PROGRAM PROCESS



It is not necessary to have a signed legal agreement between the donor and recipient before filing this information. If, however, the gift is a conservation easement, covenant, or servitude, a final or dated draft of the agreement must be provided. Review of the submitted materials and completion and signing of the *Certificate for Donation of Ecologically Sensitive Land* usually takes up to six weeks, providing there are no major issues to be resolved. In special circumstances, Environment Canada will make every effort to accelerate this process.

Certificates are issued directly to the donor, with a copy to the recipient. Donors who own land in Quebec should refer to the insert in the cover pocket of this handbook for information on the issuance of a *Visa pour dons de terrains ou de servitudes ayant une valeur écologique*.

If the transfer of an ecogift is delayed or cancelled after the Certificate (or, in Quebec, the letter of intent for the Visa) has been issued, the recipient or donor should notify the regional Ecological Gifts Program coordinator.

Highlights: Certifying a property as ecologically sensitive

- ✓ The required information has been filed with Environment Canada or a designated certification authority on the ecological character of the property, and on the donor and the recipient.
- ✓ A copy of the *Certificate for Donation of Ecologically Sensitive Land* (or, in Quebec, a letter of intent for the *Visa pour dons de terrains ou de servitudes ayant une valeur écologique*) has been received.
- ✓ Environment Canada has been notified in the event of a delay in or cancellation of the transfer.

Quebec residents who wish to make an ecogift donation of land located outside the province should speak to their regional Program coordinator for more information on the provincial income-tax laws governing such gifts.

THE ECOLOGICAL GIFTS PROGRAM PROCESS

Certifying the value of the donation

The fair market value of all gifts under the Ecological Gifts Program must be certified by the federal Minister of the Environment. In Quebec (in accordance with the Quebec *Taxation Act*), they must also be certified by the Quebec Minister of the Environment. The donor of a property that has been certified as ecologically sensitive must submit an independent appraisal of the fair market value of the donated lands or conservation easement, covenant, or servitude to the regional Ecological Gifts Program coordinator, along with a signed *Application for Appraisal Review and Determination*. Applications are available from coordinators and on the Program's Web site.

Commissioning the appraisal

Either the donor or the recipient must commission an appraisal to estimate the ecogift's fair market value.

Appraisals must conform to the Canadian Uniform Standards of Professional Appraisal Practice (The Standards) or, in Quebec, *Les normes de pratique professionnelle des évaluateurs agréés*, as well as to all Environment Canada requirements above and beyond these standards. These requirements are outlined in the Ecological Gifts Program's *Guidelines for Appraisals*, which is available on Environment Canada's Web site and through the Program's regional offices and National Secretariat.

The party that engages the appraiser should ensure that the appraiser has experience both in the location of the property and the type of real-estate interest involved (i.e., fee simple, conservation easement, covenant or servitude). Ecogift valuation training courses for appraisers and recipients have been held across Canada to help improve knowledge and understanding of requirements specific to the Ecological Gifts Program. It is mandatory that, if the appraisal assignment involves a partial interest in land, the appraiser have a dated copy of the completed (or nearly completed) agreement when doing the appraisal.



Arthur Holbrook

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



THE ECOLOGICAL GIFTS PROGRAM PROCESS



All appraisals will be reviewed by one or more members of Environment Canada's Appraisal Review Panel, as per the standards of the Appraisal Institute of Canada. The Panel is an independent advisory body made up of appraisers and other specialists, including a chair.

For more information, see the Ecological Gifts Program's *Application Guide* or *Engaging an Appraiser*. The Program's Web site also contains an up-to-date list of publications available to assist appraisers.

Finding an appraiser

For assistance finding an appraiser who has been trained in the valuation of ecological gifts, visit the Appraisal Institute of Canada's Web site at www.aicanada.org or contact the Institute by telephone at 1-800-441-8062 or by e-mail at mail@aicanada.org. In Quebec, contact the Ordre des évaluateurs agréés du Québec at 1-800-982-5387 or oeaq@oeaq.qc.ca.



Arthur Holbrook

THE ECOLOGICAL GIFTS PROGRAM PROCESS

Submitting the appraisal and application

Three colour copies of the completed appraisal must be submitted to Environment Canada's Ecological Gifts Program regional coordinator, along with a completed *Application for Appraisal Review and Determination* signed and dated by the donor. For appraisals of partial interests in land, a copy of the signed final or dated draft easement, covenant, or servitude must be included in the report.

If a donor wishes to receive a *Notice of Determination of Fair Market Value* before the end of the calendar year, applications must be submitted by mid-September or earlier, if possible. Incomplete or inadequate application forms or appraisals may be returned for more information.

Receiving a Notice of Determination of Fair Market Value

Following the review of the appraisal by one or more members of Environment Canada's Appraisal Review Panel, the donor will receive a *Notice of Determination of Fair Market Value* indicating the fair market value that the federal Minister of the Environment is prepared to certify for the property. In most cases, when the appraisal conforms to the standards outlined in the *Guidelines for Appraisals*, this process takes no more than 90 days.

The donor must, within 90 days of receiving the *Notice of Determination of Fair Market Value*, choose one of the following options:

- accept the fair market value as determined, notify Environment Canada in writing, and complete the donation process with the recipient;
- request, in writing, a redetermination by the Redetermination Committee of the Appraisal Review Panel at its next scheduled meeting; or
- withdraw from the Ecological Gifts Program and notify Environment Canada in writing. After withdrawing, a donor may re-enter the process for up to two years if the donor wishes to complete the donation of the ecological gift. A donor may also re-enter the process and make a request for redetermination, as long as the request is made within 90 days of receiving the *Notice of Determination*.

The fair market value on the Notice of determination of Fair Market Value applies to the property for two years from the Notice date for all income-tax purposes related to charitable gifts.

The redetermination process

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

The Redetermination Committee makes its recommendation to the Minister as to the fair market value of the ecological gift within 60 days of completing its redetermination. The Minister issues a Notice of Redetermination of Fair Market Value after considering the recommendation received from the Committee. For more information, see the Ecological Gifts Program Application Guide.

THE ECOLOGICAL GIFTS PROGRAM PROCESS

Completing the ecological gift



Receiving a *Statement of Fair Market Value* and donation receipt

The recipient should issue a donation receipt for the ecogift after Environment Canada has issued the Statement of Fair Market Value.

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

Once Environment Canada has received evidence that the donation has been completed—such as a copy of the registered transfer document or documentation proving that the easement, covenant, or servitude agreement has been registered on title—a *Statement of Fair Market Value* will be issued to the donor. If the content of the registered easement, covenant, or servitude agreement differs from that of the draft used for the appraisal, a letter from the original appraiser indicating whether this change has any effect on the donation's value must be provided for consideration by the Appraisal Review Panel. The value on the *Statement* should appear on the donation receipt issued by the recipient.

If, following the completion of their ecogift donation and the issuance of their official donation receipt for the gift, donors are still unsatisfied with the amount that the Minister of the Environment has determined as the fair market value of their donation, they may appeal that determination to the Tax Court of Canada and, in Quebec, the Court of Quebec. The value determined by the Tax Court of Canada will serve for the purposes of the federal income tax return, and that determined by the Court of Quebec for the provincial return. However, this course of action may only be pursued after the redetermination process has been completed.



Russ Army

The Tax Court of Canada

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

- *the Environment Minister has issued a Notice of Redetermination of Fair Market Value to the donor—either on the Minister's initiative or at the request of the donor (requests for redetermination must be made within 90 days of receiving a Notice of Determination of Fair Market Value);*
- *the Minister has issued a Statement of Fair Market Value; and*
- *the appeal to the Tax Court has been made within 90 days of the Minister issuing the Statement of Fair Market Value.*

The Tax Court of Canada may confirm or vary the amount in the Statement of Fair Market Value. This value is then deemed to be the fair market value of the ecological gift determined by the Minister.

THE ECOLOGICAL GIFTS PROGRAM PROCESS

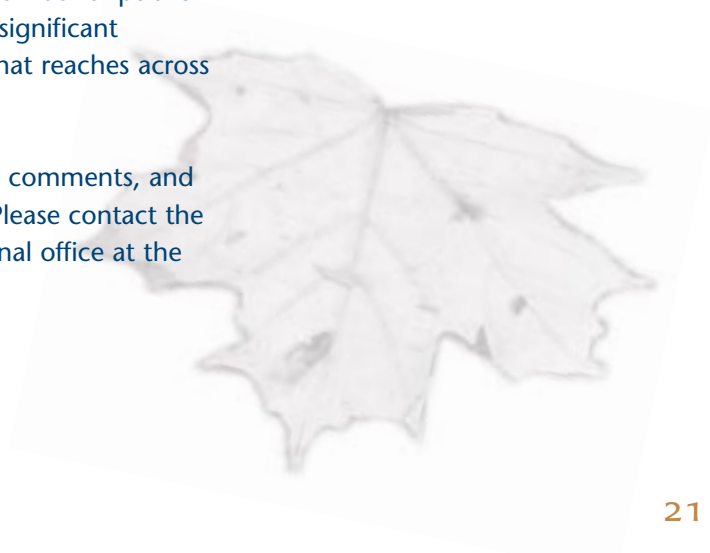
Highlights: Certifying the value of the donation and completing the ecological gift

- ✓ The appraisal meets the required professional standards.
- ✓ The application form has been signed and dated by the donor.
- ✓ Three colour copies of the appraisal have been submitted with the application.
- ✓ The donor has received the *Notice of Determination of Fair Market Value* and either accepted the value determined and confirmed that he or she wishes to pursue the donation, requested a redetermination, or withdrawn from the program and notified Environment Canada.
- ✓ The donation has been completed by the donor and recipient.
- ✓ A copy of the registered transfer document and, in the case of a partial interest, a copy of the registered easement, covenant, or servitude has been submitted.
- ✓ The *Statement of Fair Market Value* has been received from the Minister of the Environment.

Closing words

The donation of a property of ecological significance, or the voluntary acceptance of terms and conditions contained in a conservation easement, covenant, or servitude, are choices that an increasing number of public-spirited Canadians are considering. All ecogifts make a significant contribution to creating a network of protected areas that reaches across virtually every habitat and region in Canada.

The Ecological Gifts Program welcomes your questions, comments, and suggestions for improving this vital conservation tool. Please contact the Program's National Secretariat or the appropriate regional office at the numbers listed in the introduction to this handbook.



APPENDICES

Appendix 1: Glossary

The following definitions are not exhaustive, and are to be used for the purposes of this handbook only. Specific questions should be referred to independent legal and tax advisors.

Capital gain: The amount by which a capital asset, such as land, appreciates in value while it is in the owner's hands.

Covenant: An agreement between parties whereby one party has rights to the land of the other. For the purposes of the Ecological Gifts Program, covenants function to protect and conserve natural features, wildlife habitats or other heritage values. In addition to restrictions on land use, covenants are usually accompanied by a right of access for monitoring and enforcing compliance. All covenants donated through the Ecological Gifts Program must be registered on the title to the land, and bind future owners to the terms of agreement.

Covenants, easements and servitudes are similar in nature. Definitions under provincial and territorial legislation may vary, so always consult the appropriate legislation for exact information.

Designated certification authority: The authority—a federal, provincial, territorial or non-government official—designated by the federal Minister of the Environment to certify land as ecologically sensitive for the purposes of the Ecological Gifts Program.

Easement: A right of use over the land of another. For the purposes of the Ecological Gifts Program, easements function to protect and conserve natural features, wildlife habitats or other heritage values. All easements donated through the Ecological Gifts Program must be registered on the title to the land, and bind future owners to the terms of agreement.

Covenants, easements and servitudes are similar in nature. Definitions within provincial and territorial legislation may vary, so always consult the appropriate legislation for exact information.

Ecological gift or ecogift: A gift of land or a conservation easement, covenant or servitude on land that is certified as ecologically sensitive by the federal Minister of the Environment or the Minister's designate in accordance with the provisions of the federal *Income Tax Act*, and that otherwise meets the requirements of the Act that give rise to special tax benefits.

Fair market value: The most probable price that a property should bring in a competitive and open market as of the specified date under all conditions requisite to a fair sale, with 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:

- both buyer and seller are typically motivated;
- both parties are well informed or well advised, and acting in what they consider to be their best interests;
- a reasonable time is allowed for exposure in the open market;
- payment is made in terms of cash in Canadian dollars or in terms of financial arrangements comparable thereto; and
- 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.

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

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

Recipient: An organization that is eligible to receive ecological gifts, including the federal government, provinces, territories, municipalities and approved environmental charities.

Servitude: In conservation terms, a legally binding agreement made between a landowner and a conservation organization or government agency for the purposes of protecting and conserving natural features, wildlife habitats or other heritage values. The definition of total ecological gifts in Canada's *Income Tax Act* includes servitudes "for the use and benefit of dominant land". Consequently, the recipient of the donated servitude must own land that borders on the land to which the donated servitude applies in order for the servitude to qualify as an ecological gift under the Act. Only a real servitude can qualify as ecogift.



J.P. Foley

All servitudes donated through the Ecological Gifts Program must be registered on the title to the land, and bind future owners to the terms of agreement.

Covenants, easements and servitudes are similar in nature. Definitions within provincial and territorial legislation may vary, so always consult the appropriate legislation for exact information.



APPENDICES

Appendix 2: Additional Resources

Income tax information and guidance

Canada Revenue Agency. *Gifts and Income Tax*. Publication No. P113(E). Ottawa, Ontario: Canada Revenue Agency, 1994.

Canada Revenue Agency. *Registered Charities and the Income Tax Act*. Publication No. RC 4108(E). Ottawa, Ontario: Canada Revenue Agency, 2002.

Canada Revenue Agency. *Gifts and Official Donation Receipts*. Publication No. IT-110R3. Ottawa, Ontario: Canada Revenue Agency, 1997.

Meewasin Valley Authority. *Conserving Land: Canadian Tax Incentives for Private Land Owners*. Regina, Saskatchewan: Meewasin Valley Authority, 1998.

Private Land Conservation and Stewardship

Anderson, S. *Profiles and Trends of Canadian Philanthropic, Environmental, Land, and Ecogifts Donors*. Gatineau, Quebec: E-Cocreate Research and e-Communications (www.e-cocreate.com), June 2004.

Annand, M. and P. Curry. *Conservation Easements Guide for Saskatchewan*. CSALE Occasional Paper No. 6. Melfort, Saskatchewan: Centre for Studies in Agriculture, Law and the Environment, University of Saskatchewan and Ducks Unlimited Canada, 1999.

Atkins, Judy, and Ann Hillyer. *Land Conservation Transactions: Tax Implications of Gifts of Land and Interests in Land*. Ottawa: North American Wetlands Conservation Council (Canada), 2005.

Atkins, Judy, Ann Hillyer, and A. Kwasniak. *Conservation Easements, Covenants, and Servitudes in Canada: A Legal Review*. Report No. 04-1. Ottawa: Environment Canada (Canadian Wildlife Service) and North American Wetlands Conservation Council (Canada), 2004.

Barla, P. and J.-D. Saphores. *Les Mesures de protection des habitats fauniques en terres privées: les instruments économiques*. Université Laval, Ste-Foy, Quebec: Quebec Ministry of Environment, 1997.

Canada and British Columbia. 1994-2002. *The Stewardship Series*. Victoria, British Columbia: British Columbia Ministry of Environment, Lands and Parks and Environment Canada, 1994-2002. The Series is available on line at www.stewardshipcentre.bc.ca/sc_bc/stew_series/bc_stewseries.asp

Denhez, Mark. *Giving Nature Its Due; Tax Treatment of Environmental Philanthropy: Recent Improvements, Remaining Barriers and Current Opportunities*. Sustaining Wetlands Issues Paper, No. 2003-1. Ottawa: North American Wetlands Conservation Council (Canada), 2003.

Denhez, Mark. *You Can't Give it Away: Tax Aspects of Ecologically Sensitive Lands*. Sustaining Wetlands Issues Paper No. 1992-4. Ottawa: North American Wetlands Conservation Council (Canada), 1992.

Environment Canada. *The Importance of Nature to Canadians*, survey [www.ec.gc.ca/nature/survey.htm].

Girard, Jean-François. *Guide des bonnes pratiques en intendance privé: aspects juridiques et organisationnels*. Centre québécois du droit de l'environnement, 2000.

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- Greenaway, Guy, ed. *Preserving Working Ranches in the Canadian West*. High River, Alberta: Southern Alberta Land Trust Society, the Land Conservancy of British Columbia and the Sonoran Institute, 2000.
- Hillyer, Ann and Judy Atkins. *Giving it Away: Tax Implications of Gifts to Protect Private Land*. Vancouver, B.C.: West Coast Environmental Law Research Foundation, 2000.
- Hillyer, Ann and Judy Atkins. *Greening Your Title: A Guide to Best Practices for Conservation Covenants*. Vancouver BC: West Coast Environmental Law Research Foundation, 2000.
- Hillyer, Ann, Judy Atkins, and J. Miller. *Appraising Easements, Covenants, and Servitudes: Guidelines for Valuation*. Ottawa: North American Wetlands Conservation Council (Canada), 2005.
- Island Nature Trust. *Private Stewardship: The Landowner's Options*. Charlottetown, Prince Edward Island: Island Nature Trust, 1989.
- Kwasniak, A. *Conservation Easement Guide for Alberta*. Edmonton, Alberta Environmental Law Centre, 1997.
- Land Trust Alliance and National Trust for Historic Preservation. *Appraising Easements: Guidelines for Valuation of Land Conservation and Historic Preservation Easements*, Third Edition. Washington, D.C.: Land Trust Alliance and National Trust for Historic Preservation, 1999.
- Land Trust Alliance of British Columbia. *On the Ground: A Volunteers' Guide to Monitoring Stewardship Agreements*. The Stewardship Series. British Columbia: The Land Trust Alliance of British Columbia, 2001.
- Lind, Brenda. *Working Forest Conservation Easements: A Process Guide for Land Trusts, Landowners and Public Agencies*. Washington, D.C.: Land Trust Alliance, 2001.
- Longtin, Benoît. *Options de conservation: guide du propriétaire*. Centre québécois du droit de l'environnement, 1996.
- Nature Conservancy of Canada. *A Landowner's Guide to Conservation Easements*. Guelph, Ontario: Nature Conservancy of Canada, 2001.
- Nova Scotia Nature Trust. *Land Conservation. Options for Corporate Landowners*. Halifax, Nova Scotia: Nova Scotia Nature Trust, 2002.
- Ontario Nature Trust Alliance. *Land Securement Manual*. Don Mills, Ontario: Ontario Nature Trust Alliance, 1999.
- Paris, Katie. *Land Trusts: Measuring the Effectiveness of Conservation Easement Programs*. Ottawa: Nature Conservancy of Canada, 2004.
- Saskatchewan Environment and Resource Management. *Your Guide to Conservation Easements in Saskatchewan and Common Questions on Conservation Easements*. Regina, Saskatchewan: Saskatchewan Environment and Resource Management, 1998.



APPENDICES

Appendix 3: Sample information for the donation of ecologically sensitive land

Donor	Name	Jane Smith
	Address	123 Elm Street, Whatsitville, ON, 5N5 2T9
Recipient	Name	Happy Creek Land Trust
	Address	22 Main Street, Whatsitville, ON, 5N5 2T0
	Charitable Tax Number	Registered Charity # 156756h788-67

The Happy Creek Land Trust is listed on Environment Canada's Ecological Gifts Program Web site as an eligible charity.

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

Type of Donation A conservation easement under the Ontario *Conservation Land Act*.

Area 45 hectares

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 flood plain/lowland with Happy Creek forming much of the eastern border of the property. Most of the property is forested, but 10 per cent 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 Happy Creek/Jane's Woods Environmentally Sensitive Area (ESA), and the Ministry of Natural Resources has identified Happy Creek as Brook Trout habitat. The property is in good condition, having been left by the current owner in its natural state for 40 years, with no logging having occurred in the past 80 years. The landowner is actively removing invasive exotic species from the old field and selectively planting native plants to encourage grassland bird species. Threats include subdivision for housing, and upstream development and agriculture, which are causing the siltation of Happy Creek.

Habitat and Site Characteristics

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

Species Present

See attached lists from local naturalists' 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 Ontario Ministry of Natural Resources (OMNR) – Habitat for Brook Trout.
- Happy Creek/Jane's Woods ESA report.
- The local naturalists' club has also compiled species lists for this area.

Specific Provincial Ecogift Criteria Applicable to the Property

- A-1 Hart's Tongue Fern – Federal Species of Special Concern. Noted by local naturalists' club, reported to OMNR by Happy Creek Land Trust.
- A-5 Landowner has successfully applied to the Conservation Land Tax Incentive Program.
- A-14 Happy Creek/Jane's Woods ESA.
- B-5 Fish Habitat for Brook Trout noted by OMNR (Mr. Pike, personal communication).
- B-9 Part of forested corridor along Happy 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

Status of Donation

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

Purpose of the Donation and Future Intentions of Recipient

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

Attached

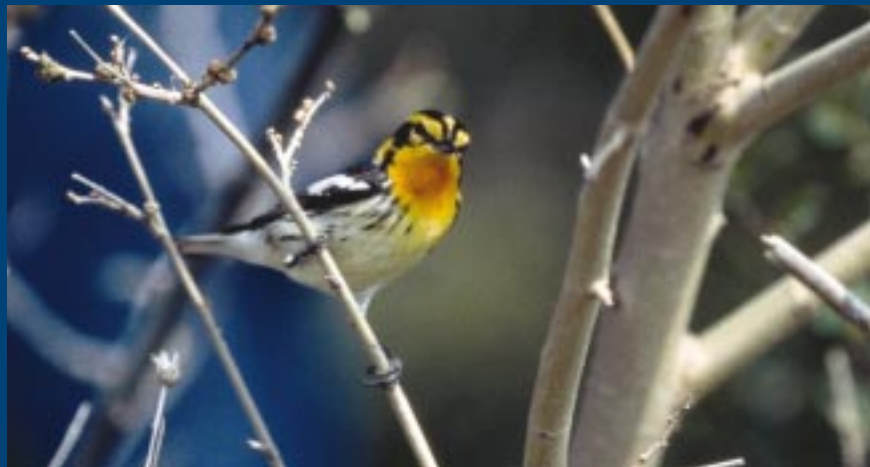
Site map, aerial surveys, species lists, final conservation easement agreement, signed letter of intent from donor.



Notes



Front cover: background, Arthur Holbrook; inset, Judith Hammond.
Inside front cover: Corel Corporation
Inside back cover (top to bottom): A. Cornellier, J.R. Graham, Carolyn Sandstrom.
Back Cover (top to bottom): W. Barrett, Eric Dresser, Russ Amy, Judith Hammond, S. Lunn.



Canada



www.cws-scf.ec.gc.ca/ecogifts