

the Ontario Ecogifts Handbook 2005

Manitowlin/photo by James Sidney



Environment
Canada

Environnement
Canada



Yellow Swallowtail/photo by: Ethan Meleg

The Ontario Ecogifts Handbook
2005

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2005.*

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Introduction

ONTARIO ECOGIFTS HANDBOOK

Under the provisions of the *Income Tax Act* (Canada), the Ecological Gifts Program (EGP) provides favourable income tax treatment to donors of ecologically sensitive lands (known as ecological gifts or ecogifts), including conservation easements.

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 favourable income tax treatment for land or conservation easement donations, and greater recognition of the value of individual conservation actions.

Across Canada, the program has fostered over 440 ecogifts covering 37,500 hectares of wetland, forest, alvar and other important habitats. Over 300 Ontarians have made more than 160 ecogifts collectively valued at over \$44 million.

While the favourable income tax treatment the EGP provides is an attraction, 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 EGP helps many people to act on that motivation, to the benefit of all Canadians.

photo by: Canadian Wildlife Service



"Landowners should pass natural capital on to the next generation. If the government makes it easy to get a tax break, all society benefits – everyone wins. But more importantly, for the rest of our lives we can view this beautiful part of Ontario's landscape and observe the wildlife, knowing that it is protected forever."

Lorne Almack, Ecogift Donor, Claremont, Ontario

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photo by: Canadian Wildlife Service

EGP Donation and Income Tax Scenarios (www.cws-scf.ec.gc.ca/ecogifts/tax_e.cfm) giving generalized examples are available from the EGP Web site or staff. The tax scenarios are simple illustrations and should not be relied on as tax advice. Donors should obtain the advice of a qualified professional to assess the legal and tax implications of any donation.

Income tax benefits

Gifts of ecologically sensitive land provide additional income tax savings, security and protection over most other charitable gifts. Specific benefits include:

- no income limit for calculating the tax credit;
- reduced taxable capital gains;
- the value of the gift is determined by the Minister of the Environment **before** the gift is made; and
- perpetual protection for the gift.

Corporate donors deduct the amount of their ecogift directly from their taxable income. The value of an individual's ecogift is converted to a non-refundable tax credit. The federal tax credit is calculated by applying a rate of 16 percent to the first \$200 of the donor's total gifts for the year and 29 percent to the balance. There is also a reduction in provincial tax payable through a similar provincial tax credit calculation.

Ecogifts differ from other charitable gifts in that they are not subject to an "income limit" in determining the amount of the donor's tax credit or deduction in respect of the gift.

Charitable gifts may be claimed in the year of the donation and any amount not claimed in that year may be carried forward for up to five subsequent years.

Donors of ecogifts also receive a reduction in the taxable capital gain realized on the disposition of the property. For most gifts, the taxable portion is 50 percent. **For ecogifts, it is just half the usual rate — only 25 percent.**

In addition to the recipient's pledge to protect the land, the Government of Canada will impose a substantial tax upon any charitable or municipal recipient that disposes of the gift or changes its use without authorization from Environment Canada.

For residents of Quebec who donate land in Ontario, there are additional certification steps in order to receive provincial income tax benefits. Please contact the EGP staff for more information.

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Using the Ontario Ecogifts Handbook

This handbook replaces any previous version. It is designed for use by donors and their advisors. It is also designed for eligible recipients under the EGP in Ontario – that is, the charities, municipalities, and the Crown that are eligible to receive gifts of ecologically sensitive land.

Donors and advisors

To claim ecogift tax benefits, donors require a *Certificate for Donation of Ecologically Sensitive Land* and a *Statement of Fair Market Value* from Environment Canada. Donors will also require an official donation receipt from the recipient when filing an annual income tax return.

The handbook has been organized into two main sections to describe these two Environment Canada certifications:

- **Certifying a Property as Ecologically Sensitive** and
- **Certifying the Value of the Donation.**

There is no fee to certify a donation as an ecogift. However, 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 and commitment of those involved.

Recipients

Recipients of ecogifts should be aware of the general tax advantages and processes of the EGP. However, since each landowner's tax situation is unique, the advice of a qualified, independent professional will be needed to assess the benefits for individual donors.

If the recipient is a charity, it must be approved by Environment Canada on the *Certificate*. Charities must be familiar with this additional step. See the **Qualifying as an Eligible Recipient** section.



Green Frog/photo by: Walter B. Fechner

What help can donors expect? Making an ecogift application

Help from the recipient

The donor is the applicant, though a recipient may provide experienced guidance to help donors through the donation and ecological gift certification processes. Recipients often help with the ecogift application by:

- evaluating the ecological character of the property and documenting how it meets the definition of ecologically sensitive land;
- 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 by a qualified appraiser; and,
- coordinating the applications to certify the property and its fair market value.

Recipients may refer donors to the EGP-Ontario staff for further information.

Help from Environment Canada

While the EGP staff cannot advise a donor on income tax and related matters, they are available at any time before and during the certification process to answer questions about ecogifts and to explain the certification process. The EGP staff may be able to meet with donors about potential ecological gift properties.

Help from independent advisors

Donors should consult with qualified independent advisors to obtain legal, tax and financial advice. Every donation and donor's income tax situation is unique, so a professional (e.g., lawyer and/or financial advisor) is required to review the specifics and advise donors of any considerations, implications, and benefits of the gift.

See **Information and Assistance** (p. 6) for additional sources of assistance.



Cedar Waxwing/photo by: Eric Dresser



Oak Leaves/photo by: Walter B. Fechner

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Who can receive ecogifts?

Landowners can donate ecogifts to three categories of organizations – the Crown, municipalities, and eligible registered charities.

The Crown

Federal or provincial government agencies are automatically eligible to receive ecogifts. Government bodies (e.g., the Ministry of Natural Resources) and related agencies (e.g., the Ontario Heritage Foundation) are included.

Municipalities

Any incorporated Canadian municipality is automatically eligible to receive ecogifts, including local, regional or county municipalities.

Eligible Registered Charities

Landowners can donate to any of over 70 eligible charities. It is sometimes possible to donate an ecogift to a charity that is not on the list, but that charity must first apply to become an eligible recipient. The actual approval of a charity by the Minister of the Environment is given in respect of any individual gift on the *Certificate for Donation of Ecologically Sensitive Land*.

To be considered for approval, an organization must meet the following criteria:

- Registered Charity status with the Canada Revenue Agency and maintain this status from year to year;
- Application filed with Environment Canada requesting to be eligible, and showing its willingness and capacity to receive such gifts; and,

One of its main purposes, in the opinion of the Minister of the Environment, must include “the conservation and protection of environmental heritage”

The list of eligible charities is available at the EGP-National Web site:

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

Information and assistance

Environment Canada

An initial call or e-mail to the Ecological Gifts Program staff may help to answer many questions, contact;

- The Ontario Region office at **(416) 739-5828** or **(416) 739-4286**, or by e-mail at Ecogifts.Ontario@ec.gc.ca; or
- The National coordinator at **1-800-668-6767**, or by e-mail at Ecogifts@ec.gc.ca.

- The EGP-Ontario Region Web site (www.on.ec.gc.ca/ecogifts) Includes background on the program, frequently asked questions and ongoing updates

- The EGP-National Web site (www.cws-scf.ec.gc.ca/ecogifts) Includes application forms, guidelines, and the list of eligible recipients

Resources

Ecological Gifts – Canadians Donating Ecologically Sensitive Land (Donor brochure)

Answers to Donors' Questions

Answers to Recipients' Questions

Conservation Options: Conservation Easements

Donor Profiles

For electronic copies of the above, visit www.on.ec.gc.ca/ecogifts

Donation and Income Tax Scenarios

Retaining the Right to Use Land Donated as an Ecological Gift

Engaging an Appraiser

Guidelines for Appraisals

EGP Application Guide (a more in-depth look at the process, particularly handy for lawyers, financial advisors and other professionals)

Confirmation that Ecogifts are Eligible for Split-Receipting

For electronic copies of the above, visit www.cws-scf.ec.gc.ca/ecogifts

Canada Revenue Agency

Canada Revenue Agency (CRA)-Charities at **1-800-267-2384** (English), **1-800-892-5667** (English or French) or www.cra-arc.gc.ca

The CRA has a number of relevant publications available on their Web site or by ordering at **1-800-959-2221**.

Gifts and Income Tax: Publication P113

([www.cra-arc.gc.ca/E/pub/tg/P113/ README.html](http://www.cra-arc.gc.ca/E/pub/tg/P113/README.html))

Gifts and Official Donation Receipts: Publication IT-110R3

(www.cra-arc.gc.ca/E/pub/tp/it110r3/README.html)

Registered Charities and the Income Tax Act: Publication RC 4108 (E)

(www.cra-arc.gc.ca/E/pub/tg/rc4108/rc4108eq.html)

Income Tax Technical News - Proposed Guidelines on Split-Receipting

(www.cra-arc.gc.ca/E/pub/tp/itnews-26/itnews-26-e.pdf)

Profit, Capital Gains and Losses from the Sale of Real Estate, Including Farmland and Inherited Land and Conversion of Real Estate from Capital Property to Inventory and Vice Versa: IT-218R

(www.cra-arc.gc.ca/E/pub/tp/it218r/README.html)

Certifying a Property as Ecologically Sensitive

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The general definition of ecologically sensitive lands is “areas or sites that currently, or in the future, could significantly contribute to the conservation of Canada’s biodiversity and natural environmental heritage”.

Each donation of land or conservation easement must be individually certified as ecologically sensitive before the next step in the process (certifying the value of the gift) can occur. In Ontario, Environment Canada staff carry out this certification on behalf of the Minister of the Environment and issue a *Certificate for Donation of Ecologically Sensitive Land*, which must accompany the donor’s income tax return.

To qualify as an ecogift, a property must meet the definition of ecologically sensitive land, including one or more of a set of criteria developed specifically for 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). See the definition (p. 12) for more information.

If the property under consideration meets one of the “A” list criteria – for example, if it contains a Provincially Significant Wetland – it will likely be certified. To qualify a property under the more general “B” list criteria, a more detailed rationale is expected to outline how it meets one or more of the criteria – in essence, to make the case for why it should qualify as ecologically sensitive.

If the donation is a conservation easement, the terms of the agreement must protect the ecologically sensitive features for which the land is certified. The Minister’s certification of a conservation easement’s ecological sensitivity and fair market value does not assess the agreement’s rigour or defensibility in a court of law.



Black Tern/photo by: John Mitchell

✓ Checklist for certifying a property as ecologically sensitive

- ✓ 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 or termination occur

Certifying a Property as Ecologically Sensitive

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Step ONE: Arrange the donation

Potential donors may select an eligible ecogift recipient in various ways. Knowing who is willing and capable of caring for the land is an essential component. All donors must consider the legal, tax and financial aspects of a donation with the support of independent legal and financial advice to ensure that the implications of the donation are fully understood before proceeding with the certification steps.

Information to determine whether the property can be certified as ecologically sensitive under the EGP can be filed at any stage in the donation process. For donations of a conservation easement, a copy of the final agreement is required, though it does not yet need to be signed. It is also possible to apply to the program after completing the gift, as information can be filed up to three years after the year in which the property or conservation easement donation was made.

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

Background information for advisors

Ecological Gifts – Canadians Donating Ecologically Sensitive Land (Donor brochure)

Answers to Donors' Questions

Answers to Recipients' Questions

Conservation Options: Conservation Easements

Donor Profiles

For electronic copies of the above, visit www.on.ec.gc.ca/ecogifts

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Confirmation that Ecogifts are Eligible for Split-Receipting

For electronic copies of the above, visit www.cws-scf.ec.gc.ca/ecogfts

Responsibilities of a recipient

Organizations that accept gifts of ecologically sensitive lands have an obligation to perpetually maintain the ecological and natural heritage values on these properties. General responsibilities could include paying taxes (or applying for property tax exemption under the provincial Conservation Land Tax Incentive Program), monitoring to ensure visitor safety and prevent abuse of the site, carrying liability insurance, and so on.

A handy reference on many aspects of recipient responsibilities is the Ontario Land Trust Alliance's *Standards and Practices* (www.ontariolandtrustalliance.org) or the Land Trust Alliance (U.S.) *Standards and Practices* (available on-line at www.lta.org).

Before accepting an ecogift, recipients should consider all responsibilities and ensure they have the financial and staffing or volunteer resources to carry them out in the long term.

To avoid potential tax liabilities recipients are advised not to make dispositions of land or changes to land use without prior written authorization from the Minister of the Environment.

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Is it really a gift?

It is up to donors and their advisors to ensure that their donations meet the definition of a gift under Canadian income tax law. In certifying the ecological sensitivity of the land or the land's fair market value, the Minister of the Environment does not assess whether or not the transfer of land or an easement qualifies as a gift for the purposes of the *Income Tax Act*.

It is strongly recommended that donors consult professional, independent tax and legal advisors to discuss all implications of the donation, including this aspect.

To issue an acceptable official donation receipt, recipients must also satisfy themselves that the property or conservation easement being accepted fully qualifies as a gift. If there is any question about whether an individual transfer qualifies as a gift for tax purposes, recipients should contact their legal advisors and/or the CRA for a ruling.

A donation of ecologically sensitive land must be a true gift; that is, a voluntary transfer of property for which the donor expects and receives nothing of value in return. An ecological gift must be made voluntarily. Generally, any legal obligation requiring a donor to make a donation will result in the donation losing its status as a gift. For example, if a landowner were compelled by a court order or by land-use bylaws to transfer property, the transfer would not be voluntary and, therefore, would not be considered a gift.

It is possible for a donor to receive some advantage (e.g., cash) and still receive a donation receipt. For information on this new split-receipting provision in the *Income Tax Act*, refer to the EGP fact sheet *Confirmation that Ecogifts are Eligible for Split-Receipting* (www.cws-scf.ec.gc.ca/ecogifts/egpub_e.cfm). In addition, the Canada Revenue Agency has draft guidelines on proposed amendments to the *Income Tax Act* regarding an administrative approach to split-receipting in *Income Tax Technical News No.26 - Proposed Guidelines on Split-Receipting* (www.cra-arc.gc.ca/E/pub/tp/itnews-26/itnews-26-e.pdf). This may be ordered by calling 1-800-892-5667.

Land that is not capital property:

Inventory lands

Gifts of land or interests in land that are not capital property (e.g., inventory lands) may qualify as ecological gifts if they meet the criteria in the *Income Tax Act*. However, ecological gifts of non-capital property will not provide the same tax benefits as ecological gifts of capital property. In the case of all charitable gifts of inventory lands, including ecological gifts, donors must include the fair market value of the land donated in their revenue for the year. In computing profit for tax purposes, the donor may deduct the cost of the land. Unlike gifts of capital property, the entire amount of the profit is included in the donor's income.

Distinguishing between inventory and capital property is not always straightforward. Often lands that have been acquired for the purpose of, for example, subdividing into housing lots are considered inventory. However, the *Income Tax Act* does not provide any guidelines and it is necessary to look to case law. For assistance in distinguishing between income from a business and capital gains, see Interpretation Bulletin IT-218R, *Profit, Capital Gains and Losses from the Sale of Real Estate, Including Farmland and Inherited Land and Conversion of Real Estate from Capital Property to Inventory and Vice Versa*, available on the CRA Web site at www.cra-arc.gc.ca/E/pub/tp/it218r/README.html.

Information available from the CRA

- *Gifts and Income Tax* (www.cra-arc.gc.ca/E/pub/tg/p113eq)
- *Gifts and Official Donation Receipts, IT-110R3* (www.cra-arc.gc.ca/E/pub/tp/i110r3em)
- *Income Tax Technical News No. 26 - Proposed Guidelines on Split-Receipting* (www.cra-arc.gc.ca/E/pub/tp/itnews-26/itnews-26-e.pdf)

Certifying a Property as Ecologically Sensitive

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Step TWO: File the ecological information

There are no formal application forms for the ecological sensitivity certification process. Instead, recipients or donors provide the information under Step Two to Environment Canada including a brief synopsis of the ecological character of the proposed ecologically sensitive lands. Two pages of supporting information are often sufficient – see the sample (p. 14). A template of headings is available from the EGP-Ontario staff or the Web site. The information should be sent to:

**Ecological Gifts Program
Canadian Wildlife Service
Environment Canada
4905 Dufferin St.
Downsview, ON M3H 5T4**

The EGP staff are available to provide assistance and will work with applicants to ensure that information is complete.

The EGP staff may conduct a site visit – donors will be notified. Donors may request that the EGP staff visit their land before an application is made in order to help assess the ecological sensitivity and condition of the land.

Required information

- Full name(s), address(es), phone, e-mail for the owner(s)/donor(s) on title and written confirmation from the potential donor(s) that they own the subject property free of any liens, encumbrances or other interests, have the authority to dispose of it, and wish to seek ecological sensitivity certification. If there are any liens, encumbrances or other interests they must be identified.
- Name, address and charitable registration number (if applicable) of the recipient organization and written confirmation of the organization's willingness to receive the donation as an ecological gift.
- Complete legal description of the property under a Land Titles or Land Registry system (general location descriptions are not acceptable).
- Type of donation – title to the land or conservation easement (if the donation is a conservation easement, a copy of the final draft agreement must be submitted).
- Area, in hectares or acres (indicate measurement unit), of the land 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 is acceptable to start.
- Confirmation that the recipient is eligible, either through reference to the list on the EGP-National Web site, or by application as outlined on p. 22.

Blue Flag Iris/photo by: Graham Bryan



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- A description of the current status of the donation (e.g., letter of intent, legal agreement, property transfer registered, etc.) and anticipated timing to completion.
- An assessment of ecological character (as outlined below and **shown in the shaded area of the sample** p. 14):
 - A short paragraph summarizing the property's ecological values, the ecogift 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 and vegetation communities or other indicators of 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 criterion 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 on the donor's behalf.
 - 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 where it is located, the area of the donation, and the significant features.
- Comment on why the donation is being made, and the recipient'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 disposing of all or part of the land or easement anticipated?



photo by: James Sidney

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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, **provided the terms of conservation easement agreements regard and protect the ecologically sensitive features of the land.**

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 Linkage, Sensitive Hydrological Feature, High Aquifer Vulnerability, Significant Landform, Minimum Areas of Influence or Minimum Vegetation Protection Zones within the Oak Ridges Moraine Conservation Plan;

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.

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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 Minister of the Environment, **provided the terms of conservation easement agreements regard and protect the ecologically sensitive features of the land.** 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 ecogifts, 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: Matt Young

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 Sparkle 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 Whatsitville, Wherever Co. (the Doe property, Jane's Woods)

Type of Donation A Conservation Easement under the Ontario *Conservation Land Act*. (see dated draft agreement, attached) **Area** 45 hectares

Certification of Recipient Sparkle Creek Land Trust is on Environment Canada's list of eligible ecogift recipients, as noted on the Ecological Gifts Program-National Web site.

Assessment of Ecological Character

The land in question is known as Jane'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 Sparkle 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 a species at risk. The lowland and much of the upland is part of the Sparkle Creek/Jane's Woods ESA and the Ministry of Natural Resources has identified Sparkle 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, upstream development, and agriculture causing siltation of Sparkle Creek.

Status of Donation

Yet to be made, anticipate completion by calendar year-end, need to receive *Notice of Determination of Fair Market Value* before closing will occur.

Habitat and Site Characteristics

The property is approximately 80% forest, 10% wetland, 5% grassland and 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
- ✗ Coastal
- ✗ Dune
- ✗ Alvar

Species Present

See attached lists from local naturalist club and landowner.

Species at Risk Present

Hart's Tongue Fern (COSEWIC Species of Special Concern; Schedule 1 Species of *Species at Risk Act*)

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.
- Sparkle Creek/Jane's Woods ESA report (Municipality of Whatsitville).
- 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 Sparkle Creek Land Trust
- A-5 Conservation Land Tax Incentive Program – landowner has successfully applied to CLTIP
- A-14 Sparkle Creek/Jane's Woods ESA (municipal)
- B-5 Fish Habitat for Brook Trout noted by OMNR (Mr. Pike, pers. comm.)
- B-9 Part of forested corridor along Sparkle 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 wishes to see the land protected from surrounding development, but still wants to be able to sell it. The donor 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. 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. Sparkle Creek Land Trust intends to hold and uphold the easement in perpetuity.

Attached

- Site map
- Species lists
- Dated final draft conservation easement document
- Written confirmation from donor of ownership and desire to seek ecological sensitivity certification
- Written confirmation from recipient to accept donation as ecogift

Certifying a Property as Ecologically Sensitive

ONTARIO ECOGIFTS HANDBOOK



photo by: James Sidney

Restrictions on recipients: Disposing of title and changing use

Recipients can be taxed if they dispose of title or change use of an ecogift without prior authorization from the Minister of the Environment. The provisions apply to ecogift donations of both title and conservation easements.

The *Income Tax Act* includes provision for a tax liability for unauthorized land-use changes and dispositions (such as sales, transfers) of properties donated as ecological gifts (Section 207.31 *Income Tax Act*). A federal tax equal to 50 percent of the fair market value of the property at the time of the unauthorized change or disposition shall be imposed on charitable or municipal recipients. The Canada Revenue Agency is responsible for administration of this tax.

In practice, land transfers or changes in use that are consistent with the original objectives of the ecogift and do not result in negative ecological impacts would likely be authorized (e.g., if the original recipient wanted to transfer ownership of an ecogift to another eligible conservation organization). 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 also would be likely to be authorized (e.g., removal of a safety hazard such as dying trees overhanging a trail).

Recipients should write to Environment Canada for authorization in advance of any proposed disposition or use change:

Ecological Gifts Program
Canadian Wildlife Service
Environment Canada
4905 Dufferin St.
Downsview, ON M3H 5T4

Environment Canada will write back with authorization or any concerns.

What about conservation authorities?

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

What about selling ecogifts?

In some circumstances, recipients may wish to accept and then sell properties that are donated with the intent of generating revenue for the purchase of other conservation lands. Such sales will not usually be accommodated under the EGP. In other similar circumstances, recipients 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). Likewise, these kinds of arrangements will not usually be accommodated under the EGP.

Certifying a Property as Ecologically Sensitive

ONTARIO ECOGIFTS HANDBOOK

Step THREE: Environment Canada reviews and issues the Certificate for Donation of Ecologically Sensitive Land



Water Lily photo by: Eric Drieser

If the completion of an ecogift donation is delayed or terminated after the *Certificate* has been issued, recipients or donors should notify the EGP-Ontario staff.

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

The *Certificate for Donation of Ecologically Sensitive Land* is issued directly to the donor, with a copy to the recipient. At that time, a Gift ID number is assigned. **It expedites matters if all future correspondence regarding the donation references this Gift ID number.**

Certifying the Value of the Donation

ONTARIO ECOGIFTS HANDBOOK



Checklist for certifying the value of the donation

- ✓ Appraisal meets the required standards
- ✓ Application forms completed and signed by donor(s)
- ✓ Three copies of appraisal submitted with application
- ✓ Donor(s) review and accept value determined, and return signed *Notice*
- ✓ Evidence of completion of gift submitted
- ✓ *Statement* received from Environment Canada
- ✓ Official donation receipt issued

The fair market value of all gifts under the EGP must be certified by the Minister of the Environment. Donors must submit independent appraisals of lands or conservation easements along with a signed *Application for Appraisal Review and Determination*. These appraisals are then reviewed by an Appraisal Review Panel under the Standards of the Appraisal Institute of Canada, that recommends to the Minister a fair market value for each gift. The *Application for Appraisal Review and Determination, Engaging an Appraiser* and *Guidelines for Appraisals* are available from the EGP-Ontario staff and the EGP-National Web site (www.cws-scf.ec.gc.ca/ecogifts).



Certifying the Value of the Donation

ONTARIO ECOGIFTS HANDBOOK

Step ONE

Commission an appraisal of fair market value

Either the donor or the recipient can commission an appraisal to establish the fair market value of the ecogift. The qualifications of the appraiser may differ, depending on the value and complexity of the valuation. See *Guidelines for Appraisals* for more information.

In selecting and engaging an appraiser, there are a number of factors that should be considered and incorporated. Please refer to the *Guidelines for Appraisals* and *Engaging an Appraiser* for full details.

Ecogift valuation training courses have been held across Canada to develop knowledge and understanding of requirements specific to the EGP. Potential appraisers should be asked whether they have completed this training. For assistance in finding an appraiser who has attended training in the valuation of ecogifts, visit the Appraisal Institute of Canada's Web site (www.aicanada.org) or contact the Institute at 1-800-441-8062 or mail@aicanada.org.

Appraisers are required to follow the EGP *Guidelines for Appraisals*. These Guidelines are updated periodically and are available from the EGP-Ontario staff or the EGP-National Web site (www.cws-scf.ec.gc.ca/ecogifts). The *Guidelines* address factors that appraisers should consider, and include a series of self-certification statements that appraisers must include and sign in their appraisal reports. Each appraiser should be provided with a copy.

Of particular note:

- If the assignment involves a partial interest in land (such as a conservation easement), the appraiser must have a copy of the completed (or nearly completed) agreement when doing the appraisal. The dated draft or final agreement the appraiser used must be included when the appraisal report is submitted for review.
- A copy of the current title abstract must be included in the report, and any existing interests and encumbrances considered in the valuation.
- Appraisers should be particularly cautioned that hypothetical conditions and extraordinary assumptions that would have an impact on highest and best use will not be permitted.
- Donors and recipients may wish to work with their appraiser early in the donation process to estimate the value of the gift. The appraisal itself, however, must be current. See *Guidelines for Appraisals* for specific timing considerations. Ideally, the appraisal date should be as close to the application date and/or donation date as possible, especially if the real estate market is rapidly changing.

Certifying the Value of the Donation

ONTARIO ECOGIFTS HANDBOOK

Step TWO

Submit the application (including appraisal) for review and determination

*Applications are accepted at any time. However, if a **Notice of Determination of Fair Market Value** from Environment Canada is desired before the end of a calendar year, applications should be submitted by mid-September to better ensure review by year end.*



photo by: Graham Bryan

Three colour copies of the completed appraisal should be submitted to:

**Ecological Gifts Program
Canadian Wildlife Service
Environment Canada
4905 Dufferin St.
Downsview, ON M3H 5T4**

Include an *Application for Appraisal Review and Determination*, signed and dated by all the owner(s)/donor(s) on title. Application forms are available from the EGP-Ontario staff or the EGP-National Web site.

Incomplete application forms and appraisals may be returned for more information. Complete applications and appraisals are reviewed by one or more qualified appraisers from the Appraisal Review Panel.

Certifying the Value of the Donation

ONTARIO ECOGIFTS HANDBOOK

Step THREE

Receive a Notice of Determination of Fair Market Value

Following the review of the appraisal by one or more members of the Appraisal Review Panel, donors will receive a *Notice of Determination of Fair Market Value* citing the value that the Minister of the Environment is prepared to certify. The recipient is sent a copy of this *Notice*. In many cases, this value will be the same as the value the donor applied to have reviewed; however, the Panel may recommend a modified value to the Minister.

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 from the date of the *Notice*. When the *Notice of Determination of Fair Market Value* is received, a donor has three options to exercise within 90 days:

- accept the value as determined, notify Environment Canada and proceed to complete the donation process with the recipient;
- request in writing a redetermination by the Redetermination Committee of the Appraisal Review Panel at their next scheduled meeting (redeterminations of fair market value must be requested within 90 days of the date of the *Notice*); or,
- withdraw from the Ecological Gifts Program, notifying Environment Canada in writing.

In most cases, when the appraisal conforms to the *Guidelines*, the review process to receive a *Notice* takes less than 90 days. Requests by the Panel for more information or clarification are sent to donors, recipients and appraisers by the EGP-Ontario staff if authorized by donors on the application form.

The fair market value determined on the Notice applies to the property in relation to all income tax purposes for charitable donations and gifts for two years from the date of the *Notice of Determination of Fair Market Value*.

Redetermination

A donor 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 decision of the Redetermination Committee of the Appraisal Review Panel, such as a second appraisal.

The Redetermination Committee makes its recommendation to the Minister as to the fair market value of the ecogift within 60 days of completing its redetermination. The Minister issues a *Notice of Redetermination of Fair Market Value* after considering the recommendation received. Details are available in the *EGP Application Guide* (www.cws-scf.ec.gc.ca/ecogifts).

Certifying the Value of the Donation

ONTARIO ECOGIFTS HANDBOOK

Step FOUR Statement of Fair Market Value and official donation receipt

Once the donors notify Environment Canada in writing that they accept the fair market value as determined (by indicating that option, signing and returning the Notice), and Environment Canada receives evidence that the gift has been completed (i.e., a copy of the registered transfer/deed and conservation easement if applicable), a certified *Statement of Fair Market Value* is issued to the donor, with a copy to the recipient. It is important to note that the registered donation must match the appraised donation (e.g., size, legal description, easement agreement, etc.). Otherwise a letter from the original appraiser regarding the impact of any changes in the donation on the fair market value will be required, along with a review of such a letter by the Appraisal Review Panel. Therefore, for reasons of expediency and cost, it is important that donations and appraisals brought to the EGP for review are based on the final or near final form of the donation.

The *Statement of Fair Market Value* must accompany the donor's income tax return, and is the basis for the recipient issuing an official donation receipt. The *Certificate* and donation receipt must also accompany the donor's income tax return.

The official donation receipt is issued by the recipient based on the value of the *Statement*. A detailed list of requirements for official donation receipts from charities is included in the CRA's publication *Registered Charities and the Income Tax Act* [RC 4108 (E)], which is available on-line at www.cra-arc.gc.ca/E/pub/tg/rc4108/rc4108eq.html or by calling 1-800-892-5667. Municipalities should consult with their own financial staff and the CRA regarding specific requirements for their official donation receipts.

If, following completion of the donation and receipt, a donor is still not satisfied with the fair market value determined for the donation, he/she may appeal the fair market value of the gift in Tax Court within 90 days of the *Statement* date. Donors must undertake the EGP's redetermination process prior to any Tax Court appeal.



Red-bellied Woodpecker/photo by: Walter B. Fechner

Qualifying as an Eligible Recipient

ONTARIO ECOGIFTS HANDBOOK



Checklist for qualifying as an eligible recipient

- ✓ Status as a registered charity, municipality, or the Crown

For charities:

- ✓ Inclusion of conservation purposes in letters patent
- ✓ Letter of application sent to Environment Canada

Charities only have to apply once to become an eligible recipient. Under some circumstances (e.g., failure to maintain charitable status), charities may be removed from the list of eligible recipients. Municipalities and the Crown are automatically eligible.

How to apply

There are no formal application forms. Potential recipients should read the criteria under “Who can receive ecogifts?” (p. 6). Send a written request to:

**National Coordinator
Ecological Gifts Program
Canadian Wildlife Service
Environment Canada
351 St. Joseph Blvd.
Gatineau, QC K1A 0H3
fax (819) 953-3575
e-mail Ecogifts@ec.gc.ca**

Include the following information:

- Full contact details – business address, e-mail, fax, and phone;
- 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; and,
- An explanation of the mission of the organization, and some examples of projects undertaken, are also recommended.

A response from Environment Canada can be expected within a few weeks. If there is urgency for qualifying (such as an impending donation), include that information in the application letter.

Environment Canada regularly updates and reviews the list of eligible registered charities, which is available on the EGP-National Web site (www.cws-scf.ec.gc.ca/ecogifts), so donors can check on the status of organizations they are considering. Already, over 70 Ontario organizations are on this list. Organizations that fail to file annual tax returns with the CRA and thus lose their charitable status will be removed from the list. Other circumstances may also result in charities being removed from the list of eligible recipients by Environment Canada.

A Final Word

ONTARIO ECOGIFTS HANDBOOK

At the end of the EGP process donors will receive two documents from Environment Canada:
a *Certificate for Donation of Ecologically Sensitive Land*, and a *Statement of Fair Market Value*.

And from the recipient:
an official donation receipt.

Together these three documents enable the donor to claim enhanced ecogift income tax benefits. More importantly donors will receive the feeling of satisfaction that they have taken a great step to protect Canada's natural heritage.

Mayfly/photo by: Eric Dresser



Ecogifts have protected many significant natural areas across Canada. Landowners who want to be part of this initiative can start by calling or e-mailing the EGP staff or a qualified gift recipient.

A Final Word

ONTARIO ECOGIFTS HANDBOOK

GLOSSARY

Conservation Easement: An agreement between two parties, usually written under the authority of the Ontario *Conservation Land Act*, whereby one party has rights to the land of the other. For the purposes of the EGP, they protect and conserve natural features, wildlife habitats or other heritage values. All conservation easements donated through the EGP must be registered on the title to the land, and bind future owners to the terms of the agreement.

Covenant: A voluntary restriction on land use. A component of a conservation easement.

Donor(s): The rightful owner(s) of the property who are proposing to dispose of the property as a gift to a qualified recipient.

Ecogifts: Donations of ecologically sensitive land (including conservation easements) certified by the Minister of the Environment. Also called ecological gifts.

Ecologically Sensitive Land: Land which is certified by the Minister of the Environment to meet the definition of ecologically sensitive land (see Ontario definition, p. 12)

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 knowledgeable, and assuming the price is not affected by undue stimulus (see Appraisal Institute of Canada standards for more detail: www.aic.org).

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

Grey-Headed Coneflower/photo by: Ross Brown, courtesy of Ontario Ministry of Natural Resources





PaintedTurtles/photo by: Walter B. Fechner

www.on.ec.gc.ca/ecogifts

Canada

