



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



Canada’s Ecological Gifts Program (EGP) provides a way for landowners in Canada with ecologically sensitive land to protect nature and leave a legacy for future generations. The EGP offers significant income tax benefits to landowners who donate land or an eligible interest or right in land¹ to an EGP recipient.

EGP recipients play a vital role in protecting Canada’s biodiversity and natural heritage and contribute towards our target of halting and reversing nature loss in Canada by 2030 and achieving a full recovery for nature by 2050. Under the EGP, recipients are responsible for the long-term management and conservation of the ecological gift and its ecologically sensitive features.

To provide a safeguard, a federal tax shall be imposed on a recipient that is a charity, municipality, or municipal or public body performing a function of government in Canada that disposes or changes the use of an ecological gift without the authorization of the federal Minister of the Environment.

In short, a recipient that allows a disposition or change in use to occur without the prior authorization of Environment and Climate Change Canada (ECCC) will have to pay a tax equal to half the fair market value of the property at the time of disposition or change in use. The property is defined as the ecological gift as described in the Statement of Fair Market Value and the Certificate of Ecologically Sensitive Land (or, in Quebec, a *Visa pour don de terrain ou de servitude ayant une valeur écologique*), regardless of whether the ecological gift consists of many parcels or lots, and regardless of whether the disposition or change in use applies to the entire ecological gift or a portion of it. This fact sheet provides general information about how ECCC addresses requests for authorization of proposed dispositions or changes in use of ecological gifts.

Since the circumstances of each request for authorization are unique, requests will be reviewed and considered on an individual basis. It is the responsibility of the recipient to assess potential actions and activities on ecological gifts and consider whether they may constitute a disposition or change in use. Questions about a possible disposition or change in use of an ecological gift should be directed to a regional coordinator of the EGP. Recipients must request authorizations for dispositions or changes in use from ECCC in writing.

Section 207.31 of the Income Tax Act (ITA)

(1) A charity, municipality in Canada or municipal or public body performing a function of government in Canada (each of which is referred to in this section as the “recipient”) shall, in respect of a property, pay a tax under this Part in respect of a taxation year if

(a) at any time in the year, the recipient

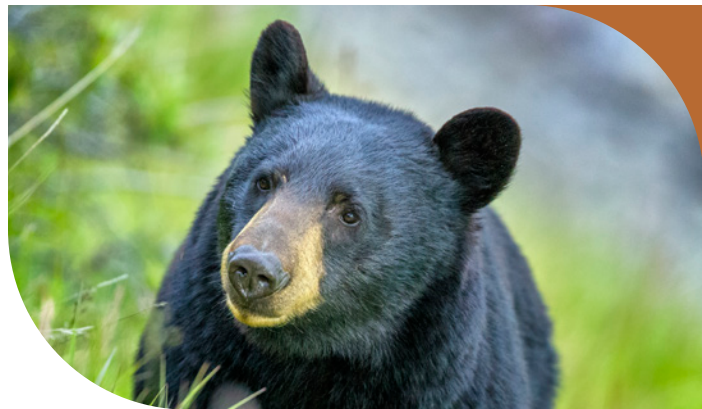
(i) disposes of the property, or

(ii) in the opinion of the Minister of the Environment, or a person designated by that Minister, changes the use of the property;

(b) the property is described in paragraph 110.1(1)(d) or in the definition total ecological gifts in subsection 118.1(1); and

(c) the disposition or change is made without the authorization of the Minister of the Environment or a person designated by that Minister.

(2) The amount of tax to be paid under subsection (1) is equal to 50% of the amount that would be determined for the purposes of section 110.1 or 118.1, if this Act were read without reference to subsections 110.1(3) and 118.1(6), to be the fair market value of the property referred to in subsection (1) if the property were given to the recipient immediately before the disposition or change referred to in paragraph (1)(a).



¹ Within the common-law jurisdictions of Canada, the term “interest” is used to refer to “interests in land.” Within the province of Quebec, the *Civil Code of Quebec* applies and the most similar concept referring to interests in land is “real rights.” For the purposes of this fact sheet, “eligible interest or right in land” refers to conservation covenants, easements and servitudes. Although similar in nature, the definitions of “interests” or “real rights” may vary among provincial and territorial legislation, so always consult the relevant legislation for exact definitions and information pertaining to these types of interests.

Disposition

With respect to an ecological gift, ECCC considers that any change to title that temporarily or permanently transfers property, in whole or in part (including the transfer or assignment of an eligible interest or right in land), constitutes a disposition for the purposes of section 207.31 of the ITA.

The following are some examples of a disposition of land or a disposition of an eligible interest or right in land:

- a transfer of ownership of the land or eligible interest or right in land, in whole or in part;
- any change in ownership of the land or eligible interest or right in land shown on title to the property, such as the addition or removal of owners on title;²
- the granting of any interests or rights in land;
- an amendment of an eligible interest or right in land that requires this interest or right to be removed from title for the amendment to be made;³ or
- the change in title resulting from the default on a mortgage over a fee simple ecological gift.⁴



² The fee simple transfer of the underlying property encumbered by an eligible interest or right in land that was the subject of an ecological gift does not constitute a disposition as long as the same eligible interest or right in land remains on title with the same priority and continues to be held by the same recipient.

³ Amendments to conservation easements, covenants or servitudes that do not require such eligible interests or rights in land to be removed from title to effect the amendments will be treated under the "change in use" provisions described in this fact sheet.

Change in use

ECCC considers a recipient to have changed the use of an ecological gift, for the purposes of section 207.31 of the ITA, if the recipient:

- undertakes any action that results in or could result in a diminution of the ecological condition or protection of the ecological gift;
- fails to take reasonable action to manage and protect the ecologically sensitive features of the ecological gift;
- changes any of the terms of an eligible interest or right in land (conservation easement, covenant or servitude) which do not constitute a disposition;
- fails to enforce the terms of the conservation easement, covenant or servitude, which results in or could result in negative impacts on the ecologically sensitive features of the property; or
- fails to take reasonable action to restore the ecologically sensitive features resulting from actions out of the control of the recipient that have resulted in the diminution of the ecological condition or protection of the ecological gift.

The following are some examples of a change in use of land or an eligible interest or right in land:

- a modification of a conservation easement, covenant or servitude (that does not require the interest or right to be removed from title for the amendment to be made) which affects the original intent of the agreement, its protective measures, an owner's reserved rights, an owner's positive obligations or a recipient's positive obligations;
- a change in land use that may negatively affect the conservation or protection of the ecologically sensitive features and/or ecological functions; or
- granting of a lease, licenses, life estate or other legally binding agreement that results in or could result in actions that cause a diminution of the ecologically sensitive features or protection of the ecological gift.

It is the responsibility of the recipient to report to ECCC actions that have resulted in the diminution of the ecological condition or protection of the ecological gift, and the actions that the recipient has undertaken or will undertake to remedy the situation, regardless of whether the action was within the control of the recipient.

⁴ The addition of a mortgage to the title of a fee simple ecological gift is not considered a disposition under section 207.31 of the ITA. However, in the case where a lending institution seizes a property as a result of a defaulted mortgage, an authorization of the disposition must be requested from ECCC prior to the title being transferred, if the federal tax is to be avoided.

Environment and Climate Change Canada's approach to considering a request for authorization

Since the circumstances of each request for authorization of a proposed disposition or change in use are unique, requests will be reviewed and considered on an individual basis. ECCC will take the following into account when evaluating a request for authorization:

- whether the proposed disposition or change in use will result in protection that is at least equal to or better than that provided for under the existing arrangement;
- whether the proposed disposition or change in use is beneficial to the long-term conservation and management of the ecologically sensitive features on the property;
- in the case of a proposed disposition, whether the intended new owner is qualified to receive an ecological gift under the criteria of the EGP and has the capacity to manage the property so as to ensure and maintain its long-term ecological integrity;
- in the case of a proposed disposition, whether it is a sale or a gifted transfer;
- in the case of an eligible interest or right in land, whether the new or amended conservation easement, covenant or servitude is: a) consistent with the spirit and intent of the original conservation agreement, and b) registered on title at least at the same level of priority as the original; and
- whether the disposition or change in use is beyond the control of the recipient of the ecological gift.

Where an ecological gift is an eligible interest or right in land created by an agreement, and a new agreement would be entered into or an existing agreement amended, ECCC will review all of the terms of the proposed new agreement or amendments. This review will include, without restriction, the intent of the original and new/amended agreements, their protective measures, the owner's reserved rights, and the owner's and recipient's positive obligations.



Note

The issuance of the Certificate of Ecologically Sensitive Land, Recipient Identification, and Registered Charity Approval Pursuant to the *Income Tax Act* of Canada (or, in Quebec, the *Visa pour don de terrain ou de servitude ayant une valeur écologique*) does not constitute an authorization by the Minister of the Environment for any disposition or change in use regarding the future intentions of the recipient for the management of the property. Similarly, any potential future dispositions or changes in use identified in the original ecological gift submission to the EGP does not eliminate the requirement to request authorization. At the time when such authorizations are required, the recipient must submit separate and distinct written requests to ECCC.

How to request an authorization for a disposition or change in use

Recipients are encouraged to discuss proposed dispositions or changes in use with their EGP regional coordinator. If the proposed action is deemed to meet the definition of a disposition or change in use, ECCC will require a written request for authorization, precise details and a rationale for the request before considering the authorization of any disposition or change in use. Only the recipient of an ecological gift may request authorization to dispose or change the use of an ecological gift. The request must contain the following information:

- a letter of request, signed by the recipient of the ecological gift, that describes the proposed disposition or change in use and the proposed timeline of activities;
- a rationale for the proposed disposition or change in use. If the disposition or change in use is necessary for public safety or an action of law, this should be stated and supporting evidence included;
- the recipient's assessment of the potential effects of the proposed disposition or change in use on the ecologically sensitive features as well as the potential impacts on their future protection. This assessment should include, if available, a digital or printed copy of the baseline documentation outlining the state of the lands, and the ecologically sensitive features of interest, at the time of donation; and
- a map of the ecological gift clearly showing the area(s) to be affected by the proposed disposition or change in use.

To evaluate a request for authorization under section 207.31 of the ITA, ECCC may solicit and consider supplemental information such as relevant studies, expert advice and property- or situation-specific documents. If not provided in the initial submission, ECCC may request the following information in certain circumstances:

- an independent opinion from an applicable qualified environmental professional (at the recipient's expense) of the potential impact of the proposed disposition or change in use on the ecologically sensitive features for which the donation had originally been certified;
- in the case of a proposed disposition, a copy of agreement(s) between the original recipient and the new owner;
- in the case of a proposed disposition, the name and full contact information for both the original recipient and the new owner;
- in the case of a proposed disposition to another eligible recipient, confirmation that they are aware of the ecological gift status of the property, and that they are willing to accept the ecological gift and the associated responsibilities;
- if the disposition or change in use is not within the control of the recipient of the ecological gift, a description of the extenuating circumstances that led to the disposition or change in use and the efforts made to protect the ecological gift. This may include a signed letter from the recipient's Board of Directors or governing body that includes a description of efforts made to protect the ecological gift and demonstrate the recipient's due diligence;
- as applicable, details of the circumstances, such as:
 - a copy of an expropriation notice;
 - a copy of a subsurface exploration claim; or
 - evidence of the dissolution of an organization, or pending dissolution;
- other legal agreements pertaining to the property, particularly those agreements from all registered charge holders in the case where amendments to a conservation agreement could result in a change in their priority status on title; and
- any other additional information deemed necessary in order to fully consider the request for authorization. ECCC may request additional information after reviewing the initial authorization request package.

It's better to ask before taking action...

Each request for authorization is unique, as the scope of activities as well as the condition, ecological features and size of each property vary across the country. Ecological gift recipients considering a disposition or change in use are encouraged to contact their EGP regional coordinator to discuss any questions.

The EGP National Secretariat may be reached by phone at 1-800-668-6767 or by email at pde-egp@ec.gc.ca.

Visit the EGP website (www.canada.ca/ecological-gifts) for more information.



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