



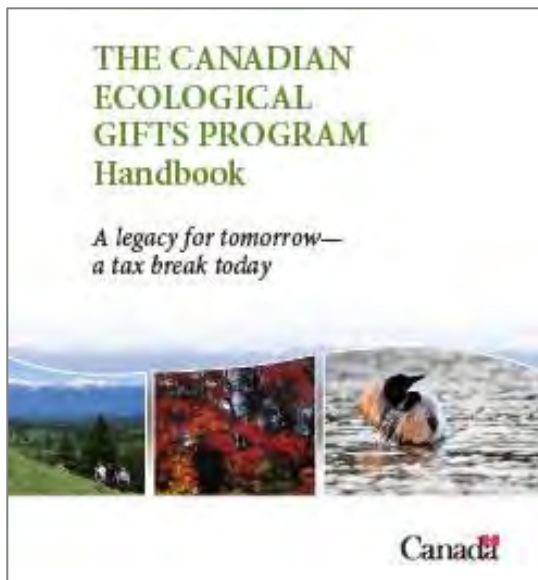
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ECOLOGICAL GIFTS PROGRAM

2018 OLTA GATHERING



Ecological Sensitivity Submissions & Disposition or Change in Use

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ECOLOGICAL GIFTS PROGRAM

ECOLOGICAL SENSITIVITY SUBMISSIONS



ECOLOGICAL SENSITIVITY SUBMISSIONS

Initial Submission to the EGP should include:

1. Donor indication of intent
2. Recipient indication of acceptance
3. Current Parcel Register
- 4. Ecological Sensitivity Application**
 - *Donation type / area*
 - *Assessment of ecological character*
 - ***How EGP criteria is met***

If applicable:

5. Conservation Easement
6. Designated signing authority



ECOLOGICAL SENSITIVITY SUBMISSIONS

Initial Submission to the EGP should include:

4. Ecological Sensitivity Application / Report

- Donor(s) names and **FULL address**
- Recipient name, contact person, address
- Donation type (fee simple, CEA, life interest)
- Donation area *
- Legal property description
 - from parcel register
 - Property Identification Number (PIN)
- Property address
- Lat / Long or UTM coordinates
- Property photos
- Species of interest
- Threats
- Local, regional, provincial significance
- Ecological information sources

Continued on next page



ECOLOGICAL SENSITIVITY SUBMISSIONS

Initial Submission to the EGP should include:

4. Ecological Sensitivity Application / Report

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Assessment of ecological character

- **Site Description:** landscape, elevation, forest type, ground cover, ecological values of the property
- **Habitat And Site Characteristics:** topography, vegetation communities, ELC not required, but excellent to provide, habitat provisions, ecological features
- **Non-ecological elements:** Structures / development on the property: buildings, boardwalks, bridges, trails, hydro corridors
- **Status of the Donation:** planned timing
- **Purpose of the donation:** donor intent
- **Future intentions for the property:** Property management or stewardship plans (does not constitute change in use approval)
- **Regional and local maps:** Zone maps if CEA, ELC map if available, location of structures, trails, corridors
- **Known threats:** property concerns, mitigation measures



CRITERIA



Donations in Ontario

- A combination of A and B regional criteria are required in order to certify a property under the EGP ([*Ecological Sensitivity Criteria*](#))
- Provide support (references or reports) to substantiate the criteria

Example:

A1. Significant portions of the habitat of federally or provincially listed species at risk including endangered or threatened species, or species of special concern.

Several ENDANGERED Butternut (*Juglans cinerea*) documented in NE corner of the property mixed in with a Beech stand. Photos included. NHIC data: EO ID:95250, observation date 2002, visually confirmed 2018. **NHIC GRID ID: 1033867, MGRS NAD83 identifier: 17P J4363**

[LINK: ECCC Recovery Strategy for the Butternut \(*Juglans cinerea*\) in Canada \[Final Version\]](#)

[LINK: OMNRF SAR INFO](http://files.ontario.ca/environment-and-energy/species-at-risk/butternut_map_eng.pdf) http://files.ontario.ca/environment-and-energy/species-at-risk/butternut_map_eng.pdf

[LINK: OMNRF NHIC MAKE A MAP](http://nhic.mnr.gov.on.ca/reports/public_details.php?source=1kmgriddetail&nhic_eo_id=95250) http://nhic.mnr.gov.on.ca/reports/public_details.php?source=1kmgriddetail&nhic_eo_id=95250

CRITERIA

- A walk through the A and B *Ecological Sensitivity Criteria...*

ECOLOGICAL GIFTS PROGRAM: ECOLOGICAL SENSITIVITY CRITERIA – ONTARIO

Applications to the EGP must include BOTH A and B criteria.

Provide rationale and evidence as to how the property satisfies each submitted criteria.

Submitted criteria are evaluated as:

- ☐ Criteria submitted; not substantiated
- ☐ Criteria submitted; substantiated
- ☐ Criteria not submitted but applicable

A1. Significant portions of the habitat of federally or provincially listed species at risk including endangered or threatened species, or species of special concern.

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. Lands that are registered under the Conservation Land Tax Incentive Program.

A6. Areas that are registered under the Managed Forest Tax Incentive Program that are managed for wildlife habitat conservation purposes under an approved Managed Forest Plan.

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

ECOLOGICAL SENSITIVITY SUBMISSIONS

Items to watch out for:

- When (re)creating property mapping
 - include all information, identify the property
 - legends, boundaries, etc.

Make sure they are legible

- Provide a source/citation/observer for ecological inventory
- Account for the ecological features of the property (e.g. SAR may be recorded in NHIC in the area, but the property is not suitable habitat for these SAR)
- Provide excerpts from the information source (e.g. Schedule B Municipal plans; include with area indicated)

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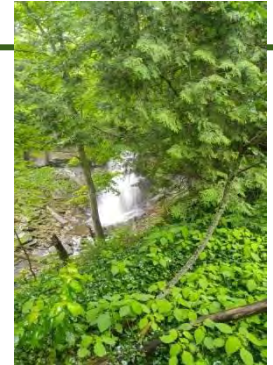


ECOLOGICAL SENSITIVITY SUBMISSIONS

...continued

Items to watch out for:

- Up-to-date information / age of source
 - (1970s NHIC SAR information likely won't substantiate the criteria)
- Current documentation for **registered** CLTIP/MFTIP
- Ensure supporting documents are for the correct area
 - If you are submitting watershed data, make sure it is for the correct watershed
- Include all relevant site description details and support (e.g. trail maps, current uses, adjacent property uses, if applicable)
- Send in all of the attachments!



PROPERTY STEWARDSHIP



- Even in the early days of an acquisition, consider a Baseline Documentation Report (BDR) for **all** properties
- ENSURE that your ecological sensitivity submission is fulsome and complete
- **Property management section**
 - consider future intentions, possibilities for the property
 - consider requirements regarding **dispositions or changes in use** of an Ecological Gift: [Disposition or change in use of Ecological Gifts](#)




DISPOSITION OR CHANGE IN USE OF ECOLOGICAL GIFTS



DISPOSITION OR CHANGE IN USE OF ECOLOGICAL GIFTS

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DISPOSITION OR CHANGE IN USE OF ECOLOGICAL GIFTS: WHAT RECIPIENTS NEED TO KNOW

Environment Canada's Ecological Gifts Program (EGP) provides a way for Canadians 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. 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 holds an ecological gift and does not meet the obligations described below. Under the provisions of the *Income Tax Act of Canada (ITA)*, these recipients are required to receive authorization from the federal Minister of the Environment prior to any dispositions or changes in use of ecological gifts. When an unauthorized disposition or change in use takes place, the recipient is subject to a federal tax pursuant to section 207.31 of the ITA.

Section 207.31 of the ITA

Any charity, municipality in Canada or municipal or public body performing a function of government in Canada (referred to in this section as the "recipient") that at any time in a taxation year, without the authorization of the Minister of the Environment or a person designated by that Minister, disposes of or changes the use of a property described in paragraph 110.1(1)(d) or in the definition "total ecological gifts" in subsection 118.1(1) and given to the recipient shall, in respect of the year, pay a tax under this Part 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 if the property were given to the recipient immediately before the disposition or change.

In short, a recipient that allows a disposition or change in use to occur without the prior authorization of Environment Canada will be subject to a federal tax assessed by the Canada Revenue Agency equal to half the fair market value of the property at the time of disposition or change in use. This fact sheet provides general information about how Environment Canada addresses requests for authorization of proposed dispositions or changes in use of ecological gifts.

Environment Canada will address each request for authorization on its own merits. 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 Environment Canada in writing.



Photo: Raymond Kolcharek © Environment Canada, 2014

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 real 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.



WHAT IS A DISPOSITION?

With respect to an Ecological Gift, Environment and Climate Change Canada considers that:

any change to title that temporarily or permanently transfers the 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 *Income Tax Act*.



Examples of a disposition of land or 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 the property title, such as the addition or removal of owners to or from title;
- the granting of any interests or rights in land; or
- 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.

EXAMPLES OF DISPOSITIONS

- Disposition – transfer to another organization
- Disposition – registration of an interest on title



- CEA with an additional conservation organization
- Funding agreement
 - Registered same day as fee simple transfer / donation
 - 207.31 responsibility for the fee simple Ecological Gift remains with the original recipient
 - Activities within the agreements are not considered 'approved', rather the registration of the agreement on title is approved as a disposition
 - It is the recipient's responsibility to determine if additional CIU requests are required

WHAT IS A CHANGE IN USE OF AN ECOLOGICAL GIFT?

Environment and Climate Change Canada considers a recipient to have changed the use of an ecological gift if it:

- *undertakes or tolerates any action that **results in or could result in** a diminution of the ecological condition or protection of the ecological gift,*
- *changes any of the terms of a conservation easement, covenant or servitude, or*
- *fails to enforce the terms of the conservation easement, covenant or servitude which results in or could result in changes to the ecological condition of the property.*



WHAT IS A CHANGE IN USE OF AN ECOLOGICAL GIFT?

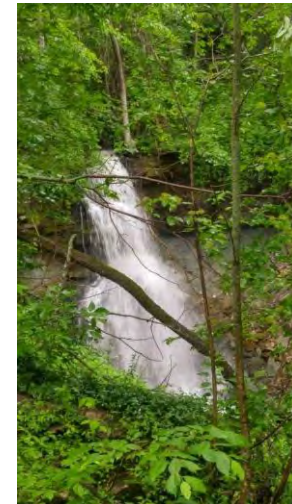
- A change in land use that may affect the **conservation or protection** of the ecologically sensitive features, functions and/or relationships that were the basis, in whole or in part, of the original or determined rationale for certifying the land as ecologically sensitive
- A modification of an agreement creating a partial interest that affects the intent of the agreement, its protective measures, an owner's reserved rights or an owner's positive obligations



ONTARIO CHANGE IN USE REQUEST EXAMPLES

Range of Change in Use Requests

- Conservation Easement Agreement amendment
- Invasive species removal
- Restoration efforts that require some loss to gain substantial benefits
- Remediation that requires heavy equipment
- Removal or replacement of structures
- Trails
- Parking lots
- Amend property boundaries
- Severances (CIU and disposition)



Property characteristics, ecological features, circumstances, details of the request, program policy, authorities, recipient responsibilities and actions, rational and justification all contribute to the decisions to authorize vs. not authorize a request

AMENDMENTS TO A CONSERVATION EASEMENT AGREEMENT

- CIU – *amendments to the terms of an easement*
- DISP – *temporary removal of the CEA from title*
- Strengthening aspects:
 - Addition of ‘Purpose and Intent’ statement
 - addition of authority acknowledgements
ECCC/EGP/ OMNRF
 - Updated/improved Baseline Documentation Report
 - Addition of definitions around trails, described use areas
 - Inclusion of recipient access rights, and right to acquire
- Confirmation that CEA will be reregistered on title in priority
- Requires both ECCC/EGP and provincial approvals (*Ontario Conservation Lands Act*)



RESTORATION EFFORTS REQUIRING A TEMPORARY DECREASE OF BIODIVERSITY

- CIU – *action that results in the diminution of the ecological features*
- Hayfields originally submitted as significant use by grassland birds
- Proposal: hayfields were going to be taken out of production
- Restoration of the hayfield area required a year or two of soybean production to eliminate seed bank containing non-native grasses and forbs (local BMPs confirmed this approach)
- Rationale: Proposed restoration to a native grassland and alvar habitat will increase nesting and foraging habitat for SAR species
- Recipient consultation with provincial staff, confirmed no permits required (SAR) and had an implementation and monitoring plan in place



VIOLATIONS OF CEA RESTRICTIVE COVENANTS

- CIU – *action that results in the diminution of the ecological features; requirement to enforce the terms of the conservation easement*

ECOLOGICAL DAMAGES

- Landowner mistake – work with landowner to rectify, report depending on severity
- 2nd generation landowner, a neighbour or an unknown party
 - report to EGP, identify remedies, potentially request CIU authorization for restoration, remediation - case by case
 - Recipients responsibility to enforce the terms of the easement and protect the ecological features

CONFLICTING SECTIONS WITHIN CEA

- No vegetation removal or no herbicide/chemical use clauses – questions around invasive species removal
 - Look to the purpose and intent section of the CEA, protection of natural features
- Paper the file – typically an e-mail to the regional coordinator explaining the actions and rationale

PARKING LOTS AND STRUCTURES

- CIU – *action that results in the diminution of the ecological features*
- Installation of parking lots is not consistent with the objectives of the Ecological Gifts Program
- Addition of structures vs. replacement/upkeep of existing structures

SEVER AND SELLING A PORTION OF LAND AFTER THE DONATION BECOMES AN EG

- Recipient request for severing off a portion of the property to sell / generate income
- Changing property boundaries
 - these requests have not been approved

Property management issues to consider BEFORE the property becomes an Ecological Gift



TRAILS


- CIU – *action that results in the diminution of the ecological features*
- Assessed on a case by case basis
- Majority have not been approved for a variety of reasons
- ***If public access was not an existing circumstance at the time of the Ecological Gift completion, introducing public access may be considered a change in use***

EXPROPRIATION CONCERNS

- CIU and/or DISP
- What is within the control of the recipient?
- Communication with the EGP
- Identify parties and potential outcomes
- Work with the EGP to communicate concerns
- Some experience in the region, but each scenario has been different






DISP/CIU REQUESTS AND FOLLOW-UP IN ONTARIO



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DISPOSITION OR CHANGE IN USE OF ECOLOGICAL GIFTS:

WHAT RECIPIENTS NEED TO KNOW

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In short, a recipient that allows a disposition or change in use to occur without the prior authorization of Environment Canada will be subject to a federal tax assessed by the Canada Revenue Agency equal to half the fair market value of the property at the time of disposition or change in use. This fact sheet provides general information about how Environment Canada addresses requests for authorization of proposed dispositions or changes in use of ecological gifts.

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Photo: Raymond Koltchinsk © Environment Canada, 2014

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- Phone conversations
- E-mail exchanges / *site visit*
- Formal DISP or CIU request submission
- Follow-up clarification as required
- ECCC-EGP response letter



DISP / CIU REQUESTS – ADDITIONAL CONSIDERATIONS

Ongoing dialogue between the recipient and the EGP is important in terms of understanding and navigating through disposition and change in use requests

Consider:

- Timely notice - allows for file review in advance of discussions and formal request – these requests can take time and do not take priority over open ongoing donation files
- Clear description of the proposed activities
- Strong rationale for the change in use activities
- Confirmation of xxxx measures and follow-up activities/monitoring to ensure the protection and long-term conservation of the ecological features
- Confirmation that all permits and permissions would be in place prior to activities commencing
- Timely responses to EGP questions about the request
- Site visit and technical discussion on location, if appropriate

In some requests it is also helpful to identify best management practices for the type of environment and/or the proposed activities (with references).

REGIONAL CONTACT

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REFERENCE SLIDES....



PREPARING SUBMISSIONS



ECOLOGICAL GIFTS PROGRAM: SUBMISSION PROCESS—ONTARIO

Additional details can be found online and in the Ecological Gifts Program Handbook: www.ec.gc.ca/pde-egp

Initial submission should include:

1. Donor indication of intent – *letter of intent OR the Application filled out and signed by all legal owners*
2. Recipient indication of acceptance
3. Current **Title Abstract / Parcel Register** showing legal landowner(s)
 - *Also submit any notices, easements, re*
4. Ecological Sensitivity Application
 - *Include description of the property, ecol*
 - *references for any of the ecological crite*
 - *Accurate, detailed property information*
 - *Apply for specific Criteria: www.ec.gc.ca/*
5. Conservation Easement Agreement – *if ap*
 - *include zone mapping, trails, relevant fe*
6. Designated signing authority – *if applicabl*

Upon receipt of **all** of items listed above, an EGP with a cc: to the recipient.

ISSUING A CERTIFICATE OF ECOLOGICAL SENSITIVITY

The submission is reviewed for ecological sensitivity. Once certification is made. With delegated authority, **Identification, and Registered Charity Approval** to the recipient.

Second submission should include:

7. FULLY COMPLETED *Application for Review*

ECOLOGICAL GIFTS PROGRAM: ECOLOGICAL SENSITIVITY CRITERIA – ONTARIO

Applications to the EGP must include BOTH A and B criteria.

Provide rationale and evidence as to how the property satisfies each submitted criteria.

Submitted criteria are evaluated as:

- ☐ Criteria submitted; not substantiated
- ☐ Criteria submitted; substantiated
- ☐ Criteria not submitted but applicable

- A1.** Significant portions of the habitat of federally or provincially listed species at risk including endangered or threatened species, or species of special concern.
- A2.** Areas designated as Provincially Significant Wetlands.
- A3.** Provincial or regional Areas of Natural and Scientific Interest.
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- A5.** Lands that are registered under the Conservation Land Tax Incentive Program.
- A6.** Areas that are registered under the Managed Forest Tax Incentive Program that are managed for wildlife habitat conservation purposes under an approved Managed Forest Plan.

ECOLOGICAL SENSITIVITY SUBMISSIONS

Initial Submission to the EGP should include:

1. Donor indication of intent

- Letter, donation agreement or Application for Appraisal Review

2. Recipient indication of acceptance

- Letter, donation agreement or e-mail submission from someone within the organization



ECOLOGICAL SENSITIVITY SUBMISSIONS

Initial Submission to the EGP should include:

3. Current Parcel Register

- Include any encumbrances / instruments listed on title – these must be addressed within the ecological sensitivity report / submission
- If a mortgage is listed, but will be cleared before closing, please explain
- Donor is the entity listed on title
- ALL entities on title must agree with the submission to the EGP
- If any donors are deceased, a death certificate and documents identifying executors or beneficiaries must be provided



HOW DO I SUBMIT A CHANGE IN USE REQUEST?

- Send your letter of request to your regional EGP coordinator.
 - *Formal letter of request addressed to the Regional Director*
 - *Include maps, supporting documentation*
 - *Discussions with the EGP coordinator can help clarify the details that should be included in the letter*
- EGP will only consider written requests that provide **clear details** with the **precise nature** of the proposed CIU/DISP.
- Provide rationale for your request.
 - *Make your case and justify your rationale*
- Provide a full assessment of the potential effects of the proposed CIU/DISP on the ecologically sensitive features of the lands.
 - *Include details of proposed activities to be undertaken and any potential restoration work*

HOW ARE CHANGE IN USE REQUESTS CONSIDERED?

- Each request for authorization of a proposed change in use (CIU) or disposition (DISP) of an ecological gift is unique and is considered on its **own merit**.
- EGP takes the following into account when evaluating a request for authorization:
 - *Spirit and **intent** of the original donation*
 - *Ecological documentation in original submission, BDR, additional sources*
 - *Will CIU/DISP result in protection that is **at least equal** to that provided under the existing arrangement?*
 - *Is the CIU/DISP request **beneficial to the long term conservation** and management of the ecological sensitive features on the subject lands?*
 - *Is the new recipient (of DISP) eligible to receive an ecological gift?*
 - *What factors are driving the CIU/DISP request?*
 - *Is the CIU/DISP within the control of the recipient?*

BEFORE A (DISPOSITION OR) CHANGE IN USE IS AUTHORIZED....

Before authorizing any changes in use of and Ecological Gift, Environment and Climate Change Canada must be satisfied that:

1. the proposed change in use will **result in protection that is at least equal to or better** than that provided for under the existing arrangement;
2. the proposed change in use is **beneficial to the long-term conservation and management of the ecologically sensitive features** present on the subject land; and
3. the change in use is **within the control of the recipient** of the Ecological Gift.

