

DISPOSITION OR CHANGE IN USE OF ECOLOGICAL GIFTS *What Recipients Need to Know*



Environment Canada's Ecological Gifts Program provides a way for Canadians with ecologically sensitive land to protect nature and leave a legacy for future generations. It offers significant income tax benefits to landowners who donate land or certain partial interests¹ in land to a qualified recipient.



Ecological Gifts Program recipients play a vital role in protecting Canada's biodiversity and environmental heritage. Under the Program, recipients are responsible for the long-term management and conservation of the ecological gift and its ecologically sensitive features. To provide safeguards, a federal tax may be imposed on a recipient that is a charity, municipality or public body performing a function of government in Canada if the obligations described above are not met. Under the provisions of the *Income Tax Act* of Canada, 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 tax pursuant to section 207.31 of the *Income Tax Act*.

Any charity, municipality 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 special tax 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 Ecological Gifts Program. Environment Canada will only provide authorizations for dispositions or changes in use in writing.

¹ Within the common-law jurisdictions of most Canadian provinces and territories, the term "interest" is used to refer to "interests in land". Within the province of Quebec, civil law applies and the most similar concept referring to interests in land is "real rights." For the purposes of this fact sheet, "partial interests" refer to conservation covenants, easements and servitudes. Although similar in nature, the definitions of "interests" or "real rights" may vary within provincial and territorial legislation, so always consult the appropriate legislation for exact information pertaining to these types of agreements.



The ECOLOGICAL GIFTS PROGRAM

Disposition

With respect to an ecological gift, Environment Canada considers that any change to title that temporarily or permanently transfers property, in whole or in part (including the transfer or assignment of a partial interest), constitutes a disposition for the purposes of section 207.31 of the *Income Tax Act*.

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

- a transfer of ownership of the land or interest(s) in land/real right(s), in whole or in part;
- any change in ownership of the land or interest(s) in land/real right(s) shown on title to the property, such as the addition or removal of owners to or from title;²
- the granting of estates or other interests in land/real rights;
- the granting of any interests/real rights over an estate in fee simple/immovable that has been donated as an ecological gift; or
- an amendment of a partial interest donated as an ecological gift that requires this interest to be removed from title for the amendment to be made.³

Change in use

Environment Canada considers a recipient to have changed the use of an ecological gift if the recipient: a) undertakes or tolerates any action that results in or could result in a diminution of the ecological condition or protection of the ecological gift; b) changes any of the terms of a conservation easement, covenant or servitude; or c) 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.

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

- a modification of an agreement creating a partial interest that affects the intent of the agreement, its protective measures, an owner's reserved rights, an owner's positive obligations or a recipient's positive obligations; or
- 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.

To evaluate a request for authorization under section 207.31 of the *Income Tax Act*, Environment Canada may consider supplemental information such as relevant studies, expert advice and gift-specific circumstances.

² The transfer of the underlying property encumbered by a partial interest that was the subject of an ecological gift does not constitute a disposition as long as the same partial interest remains on title with the same priority and is held by the same recipient.

Environment Canada's approach to considering a request for authorization

Because the circumstances of each request for authorization of a proposed disposition or change in use of an ecological gift will be unique, each request will be considered on its own merits. Environment Canada 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 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 present on the subject land;
- in the case of a proposed disposition, whether the new recipient of the ecological gift of land or interests in land/real rights is eligible to receive an ecological gift under the criteria of the Program; and
- whether the disposition or change in use is within the control of the recipient of the ecological gift.

Where an ecological gift is a partial interest created by an agreement, and a new agreement would be entered into or an existing agreement amended, Environment Canada will review all of the terms of the proposed new agreement or amendments, including, without restriction, the intent of the agreement, its protective measures, the owner's reserved rights, the owner's positive obligations and the recipient's positive obligations.

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

Requests for authorization should be sent to the regional coordinator of the Ecological Gifts Program in the province where the subject land is located. Environment Canada will only consider **written requests** that provide clear details as to the precise nature of the proposed disposition or change in use.

A request for authorization of a proposed disposition or change in use must include the following:

- a letter of request that describes the proposed disposition or change in use, and the request must be signed by the registered owner/holder of the ecological gift (the landowner or easement holder);
- a rationale for the proposed disposition or change in use;
- the applicant's assessment of the potential effects of the proposed disposition or change in use on the ecologically sensitive features of the land and the future protection of the ecologically sensitive features;
- priority agreements from all registered charge holders in the case where amendments to partial interests could result in a change in their priority status on title;
- in the case of a proposed disposition, a copy of any agreement between the transferor and transferee relating to the land or interest/real right in land; and
- in the case of a proposed disposition, the name, official mailing address and telephone number of both the transferor and the transferee.

Environment Canada may solicit additional information specific to the request, as deemed necessary.

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

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It is better to ask before acting...

Each request for authorization is unique. Ecological gift recipients considering a disposition or change in use are encouraged to contact their respective regional coordinator of the Ecological Gifts Program to discuss any questions.

Regional Coordinators

British Columbia/Yukon: (604) 940-4700

Alberta: (780) 951-8826

Saskatchewan: (306) 780-5322

Northwest Territories/Nunavut: (867) 669-4760

Manitoba: (204) 983-5264

Ontario: (416) 739-5828/4286

Quebec: (418) 649-6857

Atlantic Provinces: (506) 364-5044

National Secretariat: (819) 994-6687 or
1-800-668-6767



For more information about the Ecological Gifts Program, visit:

www.cws-scf.ec.gc.ca/egp-pde

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