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USING THE INCOME TAX ACT OF CANADA TO PROMOTE BIODIVERSITY  
AND SENSITIVE LANDS CONSERVATION

by  
Clayton Rubec

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## FOREWORD

This paper is one of a series of 22 case studies that describe practical experiences in OECD Member countries with the use of incentive measures for the conservation of biodiversity and the sustainable use of its components. These case studies were submitted by OECD Member countries to the OECD Working Group on Economic Aspects of Biodiversity as a contribution to the OECD study of the design and implementation of appropriate incentive measures for biodiversity conservation and sustainable use. In order to ensure maximum comparability between the case studies, all were developed under the common methodology described in “Incentive Measures to Promote the Conservation and the Sustainable Use of Biodiversity: Framework for Case Studies” [OECD/GD(97)125].

The practical experiences described in the 22 case studies were used as the basis for the policy advice developed in the *Handbook of Incentive Measures for Biodiversity: Design and Implementation* (OECD, 1999). This *Handbook* combines the lessons learned through the various experiences described in the case studies – covering a wide range of ecosystems, economic pressures on biodiversity, and utilising various incentive measures – with sound economic theory to develop a practical, step-by-step guide for policy-makers on the design and implementation of successful incentive measures for the conservation and sustainable use of biodiversity.

This paper was written by Clayton Rubec, Habitat Conservation Division, Canadian Wildlife Service, Environment Canada. It is released as an unclassified document under the responsibility of the Secretary-General of the OECD with the aim of bringing information on this subject to the attention of a wider audience.

This study, and the other 21 case studies submitted by Member countries, are available on the world wide web at <http://www.oecd.org/env>.

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**USING THE INCOME TAX ACT OF CANADA TO PROMOTE BIODIVERSITY AND SENSITIVE LANDS CONSERVATION**

*by*

**Clayton Rubec**

Habitat Conservation Division, Canadian Wildlife Service, Environment Canada

November 1997

**EXECUTIVE SUMMARY**

**Summary:** This case study examines recent and proposed changes to the *Canadian Income Tax Act* to promote biodiversity and conservation of ecologically sensitive lands. These were the result of the recommendations of a 1994 Task Force on Economic Instruments and Disincentives to Sound Environmental Practices which deliberated on the incentives and disincentives in the taxation system with regard to conservation of biodiversity. The main recommendations, which were approved in 1996, were to amend the *Act* to exempt from capital gains tax all donations of ecologically sensitive lands made in perpetuity to all levels of government and charities, thus equalising treatment of donations to municipalities and charities with those that are made to the Crown. This allows the use of voluntary, non-regulatory stewardship measures by landowners for biodiversity conservation, encouraged by direct and indirect financial incentives. One of the main conclusions of the 1995 national consultations on the new tax provisions was that there is a need for greater public access to the relevant information.

**Ecosystem studied:** inland freshwater ecosystems

**Incentive measures used:** positive tax incentives

**Main lessons learned:** This study is a successful example of the integration of fiscal and environmental policies to encourage the conservation of biodiversity on private and corporate-owned lands; co-operation between federal, provincial and non-government partners is essential; and the existence of an appropriate legal context at the provincial level is of great importance.

## 1. GENERAL DESCRIPTION

Canadian ecosystems are broad and diverse ranging through temperate, prairie, mountain, coastal, boreal, and Arctic conditions. Within this landscape, over 30 million Canadians now derive their livelihood. Some 55 per cent of Canadians live in cities and the rest are resident in rural communities. About nine percent of the nation is under private tenure, largely through agricultural ownership. Unlike many other developed nations, governments in Canada directly own the majority (over 90 per cent) of the land. Of this "Crown" land, much is under long-term lease to resource development sectors such as for forestry and hydro electricity production.

### 1.1 The Loss of Biodiversity

Much of Canada's most ecologically sensitive land lies on the private and corporately held lands across the nation. As governments are seeking to not only protect endangered species but also their habitats, new ways of promoting land conservation beyond traditional land purchases have become necessary. This is particularly important in a period of major financial restraint where resources are simply inadequate for governments to respond to all ecosystem conservation needs.

Since the settlement of Canada, the southern "working" landscapes of the country have become the heart of economic production in Canada. These same areas now coincide with areas of greatest risk to biodiversity. As identified in an integrated biodiversity risk assessment (Rubec *et al.*, 1993) the high risk landscapes have: (a) the highest number of species on Canada's threatened and endangered lists, (b) the lowest total area of protected space for conservation objectives, and (c) the highest degree of landscape degradation and fragmentation due to human land uses.

### 1.2 A New Approach to Conservation on Private Lands

There has been strong and active lobbying of our federal and provincial governments to develop many new tools for active landscape and biodiversity conservation in Canada. A major result has been the development of new programmes focused on private land stewardship through the establishment of financial incentive mechanisms. Two examples are the implementation of waterfowl habitat conservation and income tax measures for private lands programmes.

In 1986, the signing of the North American Waterfowl Management Plan (NAWMP) by Canada and the United States (Mexico also became a signator to this Agreement in 1994) led to the implementation of a major ecosystem conservation programme on the North American Continent. This NAWMP, now entering its second decade, has been a significant step forward and has led to conservation through co-operative, non-regulatory programmes with private landowners. In Canada alone, it has led to the conservation of over one million hectares of wetland and associated upland habitats for migratory waterfowl. The Plan is strongly contributing to restoring the populations and habitats of waterfowl and shorebird as well as many other species at risk across the Continent, particularly on privately owned and managed land.

It was recognised in 1990 that further actions and incentives were needed to engage private landowners, particularly the residents of rural agricultural communities, in conservation of the land base (Cox, 1993). The 1990s have seen a major expansion in the number and scope of activities by local, non-government land conservation organisations, especially registered charities. A particular focus of these

organisations has been to urge governments to remove disincentives in the *Income Tax Act* for land conservation. It was proposed that the federal government could take a number of significant steps in this direction.

During 1994, the National Task Force on Economic Instruments and Disincentives to Sound Environmental Practices deliberated on incentives and disincentives in the taxation system with regard to the conservation of biodiversity. In November 1994 it recommended three actions:

- (1) Amend the *Canadian Income Tax Act* to exempt from capital gains tax all donations of ecologically sensitive lands made in perpetuity to all levels of government and charities.
- (2) Amend the *Act* to equalise treatment of donations of ecologically sensitive land to charities and municipalities with similar donations to the Crown; remove the 20 per cent (of net income) cap on the deductibility of such donations.
- (3) Amend the *Act* to exempt from capital gains and allow 100 per cent of net income deductibility for donations of conservation covenants of ecologically sensitive lands.

One such proposal was to relax the tax deductibility rules for donations of ecologically sensitive lands to conservation interests (Denhez, 1992). Until 1995, donors of ecologically sensitive lands to Crown agencies, such as for park or wildlife purposes, were allowed to receive tax deductible receipts and reduce their annual taxable income accordingly. The deductible limit was set at up to 100 per cent of annual income. However, similar donations to conservation charities and municipalities were limited to 20 per cent of income. The proposal urged increasing the latter donation cap to 100 per cent for gifts to charities and municipalities. It also urged that such gifts not be subject to off-setting capital gains taxes payable to the government on disposition of these properties.

The amendment of the national income tax system, and other taxation systems, is potentially a significant mechanism to promote biodiversity conservation. The removal of taxation disincentives and the establishment of increased taxation benefits for corporate and other individual private land holders are new tools that can be used for the conservation of ecosystems.

## **2. IDENTIFICATION OF CAUSES AND SOURCES OF PRESSURES**

Our nation continues to experience significant habitat loss. Wetland ecosystems are a particular case in point. It is estimated that wetlands within Canada's borders encompass over 150 million ha (National Wetlands Working Group, 1988; Pole Star Geomatics, 1997) and comprise about 24 per cent of the total global wetland resource. Some 29 per cent of these Canadian wetlands are under direct federal jurisdiction, mainly in the northern territories, with the remainder under provincial government, non-government, or private landowner tenure. Clearly, Canadians are fortunate to have such a significant component of the world's wetlands. In fact, they are of major value to the environmental and socio-economic mosaic in which Canadians live. Wetlands provide a major portion of the nation's freshwater supply, represent significant pollution sinks, and provide interaction with groundwater supplies, as well as watershed flood protection, water quality enhancement, and wildlife habitat.

Regrettably, all is not well in the swamp. Current trends and results of monitoring studies indicate Canada has experienced a major loss of wetlands. In total, over one seventh (20 million ha) of the original wetland area of Canada is estimated to have been converted to other land uses. The most severe losses of wetlands coincide with areas of major urban concentration and rapid agricultural development. Since

settlement in Canada, up to 65 per cent of coastal salt marshes in the Atlantic region; 68 per cent of all wetlands in southern Ontario — Canada's most populated area; and 70 per cent of wetlands in prairie agricultural areas and Pacific estuaries have been drained or converted to other uses. Wetland loss in the vicinity of major Canadian cities is as high as 80 to 98 per cent.

The factors causing wetland decline are many and vary in intensity and geographical focus. The majority (85 per cent) of these losses have been attributed to drainage for agriculture, ongoing since settlement times. Expansion of urban and industrial lands represents nine percent of these losses, and the development of leisure and recreational properties represents another two percent of the national decline in wetland area. Flooding of large areas for reservoirs for hydro-electricity production and water level management in areas such as the Great Lakes shared with the United States are other important factors (Rubec *et al.*, 1988).

The situation with wetlands is mirrored in other critical and threatened ecosystems across Canada. The natural prairie grasslands, temperate Carolinian forests, old growth boreal forests, and Arctic lowlands in many cases are under significant direct or indirect pressures and influences. These are degrading the quality and remaining areas of these systems.

At the same time, over eight percent of Canada's land and water area has been secured for ecosystem conservation objectives, encompassing over 8.5 million hectares (Turner *et al.*, 1992). This includes some of the World's largest parks and wildlife areas under government management, many of which are in the northern, sparsely settled regions of the nation. Regrettably, many of the most endangered landscapes in Canada remain outside of existing conservation regimes. It was not until the 1980s that significant steps were made in Canada to focus new attention on private land stewardship in the settled southern landscapes.

Under existing provisions of the *Income Tax Act* individuals or corporations have been able for many years to donate private land to a federal or provincial government and receive a tax credit for "gifts to the Crown". In general, donors receive a federal tax credit of 17 per cent of the first \$200 of the value of the gift and 29 per cent of the remaining value of the gift to the Crown. Further benefits accrue through reduced federal surtaxes and provincial taxes which may increase the tax benefit to over 50 per cent of the fair market value of the donated property.

Recently, the deduction limit for capital donations to the Crown (effective February 1997) was reduced to 75 per cent of annual income. At the provincial level, gifts to the Crown include those made to a Crown agency such as a provincial Ministry of lands, natural resources, environment, or parks. This also includes Crown corporations such as the Saskatchewan Wetlands Conservation Corporation and the Manitoba Habitat Heritage Corporation. In July 1997, the Government of Canada announced its intention to further amend the *Act* to allow ecological gifts to Crown agencies, thereby re-establishing the 100 per cent deductibility limit for this type of Crown gift.

### **3./4. IMPACTS ON ECOSYSTEMS AND THE ECONOMY**

The ecosystems at greatest risk, in particular wetlands, are strongly concentrated in Canada's southern ecosystems. As the habitats in these ecosystems have experienced declines in habitat quality and quantity, a wide range of wildlife species (including fish, fauna, and flora) have become threatened and endangered in Canada. Of the 291 species most recently listed by the Committee on the Status of

Endangered Wildlife in Canada (April 1997), 13 are now extinct in Canada (10 more are gone forever in the entire World), 67 are endangered, 70 are threatened and 131 are listed as vulnerable. This includes, for example, 46 species of birds and 32 terrestrial mammal species. Nineteen marine mammal species and 58 fish species are listed. The remaining listed species are dominated by plants and a few lichens, mosses, amphibians, and reptiles. Many of these species are, or at one time were, economically important for hunting or other activities by aboriginal and non-aboriginal communities.

Many of these species are at risk due to one direct factor: habitat loss. This is particularly true for wetlands where some of the World's most famous endangered species, such as the Whooping Crane, reside. The geographic areas of Canada where habitat loss has been most severe are the private landscapes of southern Canada. Hence, the tax measures described in this paper are part of a national strategy to implement new tools in these focused areas of the nation, creating opportunities for land conservation with the owners of these lands.

Land conservation is delivered hand-in-hand with parallel initiatives to conserve economically vital landscapes. In Canada's central Prairies — which are among the most important production areas for wheat in the World — species conservation also means soil and water conservation. The linkages between vital habitat and vital economic lands are strong and require creative actions to engage the landowner.

One such example is the North American Waterfowl Management Plan. This Plan has now been in place since 1986, and is delivered through a partnership of government and non-government interests across Canada, the United States, and Mexico. It has seen over one million hectares of wetland and upland habitat for migratory species conservation conserved in the Prairies alone. This is done through voluntary, non-regulatory landowner stewardship initiatives, involving both direct and indirect financial incentives. They are being designed under the same philosophy and approach described in the *Income Tax Act* initiative, and thus allow private landowners to benefit through the donation of sensitive lands.

## **5. IMPLEMENTATION OF THE INCENTIVE MEASURE AND CONTEXT**

Through three successive Budgets from 1995 to 1997, the Federal Government has responded to the widespread support for amendments to the *Income Tax Act* to remove disincentives to the conservation of biodiversity on private lands. It has done so by creating the new category of "ecological gift", as announced in the 1995 Budget, expanding the facility for the donation of capital gifts (including land) to charities as announced in the 1996 Budget, and announcing its intention to relax and revise rules for valuing conservation easements in the 1997 Budget.

In February 1995, the federal Minister of Finance announced in the Budget that measures would be introduced to amend the *Income Tax Act* to foster ecological gifts. It has long been felt that particular disincentives in the tax system have actually financially penalised donors of land worthy of conservation. In 1996, after significant national consultation with other levels of government and non-government conservation organisations, these new measures were approved by Canada's Parliament and now make it possible to freely donate land in Canada. Federal income tax forms now include specific reference to a new category of charitable donation: *ecological gifts*. The legal establishment of such gifts and their administration of them is the subject of amendments to the *Income Tax Act* enacted in Bill C-36 on 22 June 1996.



This initiative has removed a legislative barrier to conservation interests. It is an important new mechanism to promote conservation of biodiversity on lands of particularly high value to biota. These tax changes mirror similar changes incorporated into the *Loi des Impôts et Revenues* of Quebec, a Canadian province that has run its own income tax system for many years. The income tax system for Canada's other nine provinces and territories are fully integrated with the federal tax system. Hence, Canadians in all regions may now donate "ecologically sensitive lands" without tax penalty.

This measure complements traditional efforts to protect ecosystems through parks and wildlife initiatives but uses the new thrust of economic incentives as the operative tool. It recognises that private lands in Canada are the geographic areas of greatest risk to biodiversity, and are where ecosystem securement actions may have the greatest pay-off in terms of ecosystem and biological conservation. It also recognises that new incentive measures not requiring heavy government involvement, and without significant direct expenditures of government funds, are quite critical in these areas. Governments increasingly have fewer resources and in many cases are simply unable to directly purchase critical lands. It is believed that this initiative will complement nation-wide land stewardship programmes focused on private lands, such as the North American Waterfowl Management Plan, and the activities of land conservation movements.

The *Act* delegates authority to the Minister of Environment for administration of a nationally-standardised certification process for the gifts, for qualification of eligible charities, and for establishing implementation agreements with other agencies. The *Act* also defines penalty provisions that will discourage any future degradation or non-approved title transfers of the gifts. The measures establish definitions for such lands province-by-province recognising regional variations across Canada in land management regulations and the existence of parallel legislation for conservation instruments.

## **5.1 The New Tax Legislation for Donations to a Municipality or Registered Charity**

The changes to the *Income Tax Act* enacted on 22 June 1996 establish the basis for ecological gifts to municipalities and charities. Existing provisions of federal income tax legislation have allowed donations of land to non-government registered charities and to municipalities. Donors of these gifts, however, were restricted to using tax receipts to deduct a maximum of 20 per cent against their income each year. In practice this meant the full benefit of a receipt might not be fully used by a taxpayer even if spread over several tax periods (the current year plus up to five additional years). Hence, the gift of private land to a municipal government or a non-government registered charity was treated differently than gifts to Crown agencies, making the former less attractive as recipients.

Through these changes, the 20 per cent annual limit for use of a tax receipt for ecological gifts to municipalities and charities has now been abandoned. In its place, the *Act* allows the credit (or deduction for corporations) for an ecological gift to be used to reduce up to 100 per cent of a donor's annual taxable income (in the case of individuals) in the first and up to five additional tax years. The amendments to the federal income tax system now allow private citizens and corporations to give their land not only to the Crown, but also to municipalities and registered charities. The revised *Act* now treats such donations to municipalities and charities in an equitable manner to gifts to the Crown (e.g. federal or provincial or territorial governments).

In order to qualify for 100 per cent deductibility against annual income for such a gift, the *Act* requires the gift to be certified according to nationally or provincially-based criteria as being "ecologically sensitive". A list of registered charitable land conservation organisations deemed eligible to participate as recipients of these gifts has been established, and includes local, provincial, and national land conservation foundations, trusts, and related organisations (Rubec, 1997).

### **5.1.1 Additional Budget Announcements on Gifts of Capital Property**

As part of the March 1996 federal Budget, the Minister of Finance also announced additional measures to promote general gift giving to Canadian charities. As part of this announcement, a new formula was announced for calculating the value of tax receipts for all capital gifts (e.g. including land, buildings, stocks, cash, bonds, etc.). These changes reduced the annual limit for capital gifts, excluding those designated as an "ecological gift".

In the February 1997 Federal Budget, the Government standardised the annual limit against income for deductions for such gifts, including gifts of land to the Crown, from 100 per cent to 75 per cent. This has had important implications for gifts of land, as a Crown gift is now less favourable than a certified ecological gift (75 per cent limit against annual income for the receipt versus 100 per cent respectively). On 31 July 1997, the Government of Canada released draft amendments to the *Income Tax Act* that extend recipient status for ecological gifts to all federal, provincial, and territorial Crown agencies in late 1997. In these cases, the capital gift limit will be reinstated at the 100 per cent level against annual income.

Donors are being urged to seek legal advice on the implications of these measures. The formula is complex but, like the 1995 announcement regarding ecological gifts, can result in a tax receipt issued by a receiving charity that is deductible against annual income, with carry forward provisions. These 1996 measures do not apply to gifts to municipalities and do not require the certification process that ecological gifts do.

## **5.2 Implementation Consultations and Development of Principles**

National consultations on the implementation of this new legislative initiative were conducted during the April to November 1995 period. This involved presentations by Environment Canada staff to representatives of provincial governments and conservation organisations. These consultations brought forward the following guidance:

- (1) The federal government should establish general, broad national criteria to define what is ecologically sensitive land using the criteria established under a provincial initiative in Quebec in 1994 as a starting point.
- (2) As simple a process as possible is needed for certification of the property and the receiving agency.
- (3) The implementation process should avoid duplicating existing procedures.
- (4) The best sources of expertise and information should be used, thus directly engaging provincial and non-government interests in the implementation of the measure. The federal government should not act alone despite the federal legislative authority under which the measure falls.
- (5) Public access to information on this measure is critical to its success. Hence, the government should promote awareness of the process by publishing regularly updated interpretation materials.

### **5.2.1 Definition of Ecologically Sensitive Land**

As a result of the national consultations, general criteria for defining ecologically sensitive lands were established nationally (described below). Criteria in Quebec were established in 1994 and have been adopted for federal use in that province as well. Subsequently, modified criteria were adopted in the provinces of Ontario, Quebec, and New Brunswick which are in line with provincial legislation and land management requirements. Provincial criteria are also being developed in several other provinces at this time.

The current environmental values of ecologically sensitive lands as well as those that may accrue to the site as a result of conservation initiatives are included in the consideration of what is ecologically sensitive land. The following definition has been developed:

*ecologically sensitive lands are sites or areas that presently, or in the future, could significantly contribute to the conservation of Canada's biodiversity and natural environmental heritage.*

Such lands include:

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

### **5.2.2 Process for Donation of Ecologically Sensitive Land**

This new initiative created tax deductions or tax credits for "ecological gifts". The focus is on private land donation to charities and municipalities and on biodiversity at greatest risk (private land areas in southern regions). The provisions of the *Income Tax Act* are specific to those donations of land which are under private title, thus excluding the donation of leased rights to use of Crown held properties. Water bodies and freshwater or ocean shoreline properties that are not in private title or where the title is in dispute, or unknown, do not qualify.

Where ecologically sensitive lands are donated that are included in a larger parcel of land, the entire donated property is considered ecologically sensitive and qualifies in total as a gift. Gifted lands must be of clear title. Hence, these provisions do not apply to third party arrangements. For example, this tax benefit does not apply to the donation of properties of any kind that are intended to be resold to generate revenue for acquisition of other lands. Ecological gifts for income tax purposes must fully satisfy legal definitions established by Revenue Canada as to what constitutes a gift. Donors must also ensure that techniques used to establish the value of such gifts for the purposes of a tax deductible receipt use methods approved by Revenue Canada.

Only title transfers, covenants, easements, and servitudes established through Common Law (or Civil Code in Quebec) or through particular provincial or territorial legislation are included. Provincial or territorial legislation allowing for establishment of conservation easements, covenants, and/or servitudes are in place or under development in most provinces or territories. At the present time, in the absence of enabling provincial legislation for covenants or easements, some jurisdictions restrict ecological gifts to land title donations.

A recent review of the status of such legislation in Canada is found in *Canadian Legislation for Conservation Covenants, Easements and Servitudes: The Current Situation* by Silver *et al.* (1995). A recent

review of methods for establishing the value of conservation easements in Canada has been published, entitled *Conservation Easement Valuation and Taxation in Canada* (Attridge, 1997).

#### *The Tax Receipt*

A tax receipt for the fair market value of the gift of land title, or a receipt based upon the excepted value of an easement, covenant, or servitude must be issued by a qualified Canadian municipality or a federally registered charity under this provision of the *Act*. The tax receipt must be attached to a completed and signed copy of the Environment Canada *Certificate for Donation of Ecologically Sensitive Land* (or the *Visa pour dons de terrains ou de servitudes ayant une valeur écologique* in Quebec) as described below.

#### *The Certificate*

The *Certificate for Donation of Ecologically Sensitive Land* must be completed and submitted to Revenue Canada with the tax receipt. Copies of this document are available from offices of the Regional Director, Environmental Conservation/Canadian Wildlife Service, Environment Canada, and other designated provincial and non-government officials across Canada. English and French versions of this form are available.

The *Certificate for Donation of Ecologically Sensitive Land* includes:

- the donor's name and address and social insurance number;
- the location and brief legal description of the donated ecologically sensitive property;
- a check-off box as to what kind of donation it is — land, covenant, easement, or servitude;
- name and address of recipient agency (and charitable tax number if appropriate);
- a certification (signature) of the Minister, or any individual assigned this responsibility and authority by the federal Minister of the Environment, attesting that the donation satisfies criteria for being "ecologically sensitive";
- a certification (signature and check-off box) of the Minister, or any individual assigned this responsibility and authority by the federal Minister of the Environment, attesting that the recipient agency is either a Canadian municipality or a registered charity recognised by Revenue Canada and "qualified" in the opinion of the federal Minister of the Environment; and
- the date the certificate is completed.

Donations of ecological gifts made in Quebec must use the *Visa pour dons de terrains ou de servitudes ayant une valeur écologique* issued by Revenue Quebec. These are available from regional offices of the Ministère de l'Environnement et de la Faune in Quebec. This form requires essentially the same information as the federal form. Quebec donors work entirely within the system established under the *Quebec Income Tax Act* as amended in 1994 for the donation of ecological gifts. These donors file duplicate copies of their tax receipts and the *Visa* form to both the federal and Quebec income tax authorities with their annual tax returns in order to receive tax benefits under both systems.

The Canadian Wildlife Service of Environment Canada, acting as the lead national agency for this initiative, maintains a central reference file concerning the scope and details of ecological gifts made each year across Canada. Periodic reporting is proposed by Environment Canada. Information on the identity of

donors is kept confidential and all concerns for provisions of privacy legislation are being addressed. The central reference file records the following information:

- the number of certificates for donations issued each year;
- the number of certificates issued, by province and territory;
- the type of donations made (land, covenant, easement, or servitude);
- the name and address of the registered charity or municipality which received each donation;
- the area (in hectares or acres) of the donations of land;
- the precise location and legal description of each property to allow for future legal reference if required;
- the general ecological character of the gift; and
- if available, the dollar value of the donations.

### 5.2.3 *Certification of Gifts*

The Minister of the Environment has designated several senior managers to act as federal authorities for certifying ecological gifts and for completion of the *Certificate for Donation of Ecologically Sensitive Lands*. These officials are:

- Director General, Canadian Wildlife Service, Environment Canada;
- five Regional Directors for Environmental Conservation, Environment Canada: Pacific and Yukon Region, Prairie and Northern Region, Ontario Region, Quebec Region, and Atlantic Region; and
- Regional Director General and the Executive Director, Habitat Enhancement Branch, Pacific Region, Fisheries and Oceans Canada.

At the present time, discussions with each province are focused on designating additional provincial and non-government officials to act on behalf of the federal Minister. These officials are being designated through federal-provincial agreements or administrative arrangements.

Agreements with provincial authorities have currently resulted in the following additional officials being designated to act on the federal Minister's behalf:

- Deputy Minister, New Brunswick Department of Natural Resources and Energy;
- Deputy Minister, Nova Scotia Department of Natural Resources;
- Director of Fish and Wildlife, Saskatchewan Department of Environment and Resource Management;
- four Directors in the British Columbia Ministry of Environment, Lands and Parks; and
- ten Regional Directors in the Quebec Ministère de l'Environnement et de la Faune.

The Minister has also designated senior officers in several non-government organisations to exercise self-certification of ecological gifts to these organisations in some provinces. The Nature Conservancy of Canada and Ducks Unlimited Canada, for instance, may directly complete the certification process in Nova Scotia and British Columbia. Several provincially based organisations may also now directly certify gifts in these two provinces, including the British Columbia Nature Trust, the Kingsburg

Coastal Conservancy, and Trans Canada Trail Foundation. A current list of designated federal and provincial government and non-government certification authorities entitled *Ecological Gifts: Implementing Provisions of the Income Tax Act of Canada* is published periodically (Rubec, 1997).

#### *Duties of Certification Authorities*

A federal official or any other person in a provincial, territorial, or non-government organisation so designated to act on behalf of the federal Minister of the Environment exercises the following three functions:

- certifies the character of ecological gifts on the required Certificate for Donation of Ecologically Sensitive Land issued by Environment Canada (except in Quebec where the provincial form is used);
- certifies that the recipient agency for the gift is a qualified registered charity or a Canadian incorporated municipality; and
- responds to requests in writing to review title transfers or changes in land use of gifts of title to ecologically sensitive lands.

#### **5.2.4** *Qualified Recipient Agencies*

This provision of the *Income Tax Act* deals with ecological gifts to qualified recipient agencies. These are currently restricted to Canadian municipalities and registered conservation charities.

*Municipalities:* A qualified "municipality" includes any incorporated municipality in Canada, or subservient body or corporation of a municipality (such as a Water Board or Planning Authority) if it is in a legal position to issue tax receipts. The definition of a municipality also extends to similar levels of government within each province or territory (thus including Regional Governments and Rural Recreational Municipalities in several provinces). There are several thousand municipalities in Canada.

*Registered Charities:* A qualified "registered charity" includes any non-government organisation granted charitable status by Revenue Canada, one of the main purposes of which is, in the opinion of the federal Minister of the Environment, "the conservation and protection of Canada's environmental heritage". A list of 110 registered charities believed by the Minister of the Environment as of 1 August 1997 to be so qualified is provided in Appendix 1. Organisations of a national nature may receive ecological gifts located in any province or territory; other organisations either act within one or several provinces or territories or just locally. A complete list with addresses for these organisations is being published periodically by Environment Canada (Rubec, 1997). Additional qualified charities will be added to this list as they are identified.

*Crown Agencies:* Organisations such as federal, territorial, and provincial government parks and protected areas agencies and heritage conservation corporations are agencies of the Crown. These agencies can assist donors in making ecological gifts either to the Crown or other groups such as charities. The Government of Canada announced draft legislation on 31 July 1997 to extend the list of qualified recipient status for ecological gifts to all federal, provincial, and territorial Crown agencies.

#### *Responsibilities of Recipient Agencies*

Recipient agencies have the following responsibilities:

- provide advice and assistance to potential donors, giving guidance through the donation process;
- issue tax receipts and ensure that fair market value assessments or other evaluation methods for easements, covenants, or servitudes are reasonable and legally defensible;
- accept donations of ecologically-sensitive land, easements, covenants, or servitudes cognisant of long-term responsibilities for the property (e.g. payment of local property taxes and maintenance such as weed control or fencing as may be required by local ordinance);
- seek the approval of the Minister of the Environment (or other delegated official) for land use changes or disposition of these properties; and
- act as a key partner in this donation/heritage conservation initiative.

### 5.3 A Flexible Approach

A key aspect of this initiative has been to remain responsive to the wishes and concerns of provincial and non-government partner agencies. The federal government has encouraged modification of criteria and procedures to fit provincial regulatory and legal frameworks and the direct involvement of environmental non-government organisations. Certification authorities now represent a wide range of participating agencies reflecting the local interests, culture, and priorities across Canada with no single model being applicable in all cases.

### 5.4 Implementation Agreements

Environment Canada is leading the drafting of agreements and administrative procedures with each province for implementation of this initiative. Five such agreements are now in place (with the provinces of New Brunswick, Nova Scotia, Quebec, Saskatchewan and British Columbia) with ones for the remaining five provinces and two territories currently under consideration. These specify procedures for the certification process consistent with provincial regulations. Some provinces may not participate in this programme. In such cases, federal authorities will continue to administer the issuing of *Certificates*.

#### 5.4.1 Provisions for Quebec Donors and Quebec Donations

The federal benefits are extended to Quebec donors by joint use of the existing provincial certification process for gifts of "milieu écosensible", as established in Quebec in 1994. The following provisions for donations of ecologically sensitive land in Quebec or by Quebec residents have been established jointly by the governments of Canada and Quebec. This was undertaken to harmonise this federal taxation initiative with existing provisions for such donations as stipulated under the *Quebec Income Tax Act* in 1994.

- The form (No. TPF-712.02, 94-12) published under the authority of the Quebec Minister of Revenue and entitled *Visa pour dons de terrains ou de servitudes ayant une valeur écologique*, is recognised as equivalent to the Certificate for Donation of Ecologically Sensitive Land. It is recognised by Revenue Canada as a legally acceptable document to support a tax receipt in implementing this federal Income Tax Act benefit for such donations in Quebec.

- Residents of any province or territory outside of Quebec who make a donation of ecologically sensitive land located within Quebec must use the Revenue Quebec Visa form.
- Residents of Quebec making donations of ecologically sensitive lands located outside of Quebec must use the Environment Canada Certificate for Donation of Ecologically Sensitive Land. In this particular case, the tax benefit will only be recognised on federal income tax filings, as the Quebec Income Tax Act benefits apply only to donations in Quebec.
- No federal authority or action in this area supersedes or in any way is deemed to interfere with the responsibilities or authorities of the Government of Quebec in administering provisions of the Quebec Income Tax Act with respect to the donation of ecologically sensitive lands in Quebec.
- The Visa pour dons de terrains ou de servitudes ayant une valeur écologique form used in Quebec may only be signed by regional officials of the Ministère de l'Environnement et de la Faune du Québec as stipulated in the Quebec Income Tax Act. These Quebec officials are not authorised to sign the federal Certificate.

#### **5.4.2 Penalty Provisions**

The June 1996 amendments to the *Income Tax Act* include taxation penalties for non-approved land use changes or dispositions of gifts of title to ecologically sensitive properties. A tax penalty equal to 50 per cent of the fair market value of the property at the time of disposition or land use change (as opposed to the time of acquisition) may be imposed by Revenue Canada. Some changes in land use or disposition may be allowable. These are subject to the approval of the authorities which have delegated implementation responsibilities on behalf of the Minister of the Environment.

The intent of this penalty provision is to allow for the ongoing protection of the ecological values of gifted lands. It is expected that a simple exchange of written correspondence to the certification authority will be all that is necessary. Failure to request the advice/approval of this authority in advance could result in a significant tax penalty being imposed by Revenue Canada. Environment Canada staff and other delegated officers are not the enforcement power in this initiative, and thus they do not undertake inspections or intervene in any manner unless requested.

In the case of ecological gifts of easements, covenants, or servitudes related to such properties, it is not the intent of the Government of Canada to require approval for land use changes or title transfers as legal restrictions and penalties exist for such easements and covenants under provincial law. Such restrictions in use or access rights that are the subject of an ecological gift are attached to the title of the land and transfer with it.

In the event of a disposition or change in land use of such a property that is not approved by the federal Minister of the Environment, or another designated person, Revenue Canada requires completion of a form entitled *Part XI.2 Tax Return in Respect of the Disposition of Certain Properties*. Part B of this form deals with tax payable on non-approved disposition or change in land use for ecological gifts.

Such penalty provisions have been a cause for concern by some potential donors and recipient agencies. The penalty provision it is expected would be applicable only to the transfer of titled property that was the object of an ecological gift. In the case of a gifted easement or covenant, such a penalty likely does not apply although specific clarity on this will require Revenue Canada interpretation as cases arise. It is the



responsibility of individuals purchasing properties that are or have been the subject of an ecological gift for tax purposes to become aware of their liabilities and responsibilities. Provincial and territorial easement, covenant and servitude legislation will govern the rules under which properties affected by these legal instruments can be altered or sold.

It must be stressed that the penalty is likely to come into play only if a non-approved change in land use or disposition occurs of a gift of title to ecologically sensitive land. In cases where transfer of ownership or change in land use would be consistent with the original conservation objectives, no tax penalty will result. It has been recommended that recipient agencies approach delegated authorities acting for the Minister of the Environment to review any proposed changes in ownership or land use and have these noted, in writing, as being acceptable (or not). Many kinds of land use changes will be considered acceptable, including enhancements of the ecological value of the site. Experience with this measure will provide examples of acceptable and non-acceptable land uses and dispositions.

In Quebec, the portion of an ecological gift submitted to Revenue Quebec for a tax benefit is not subject to any penalty provisions as the relevant Quebec income tax legislation is silent on this issue. There is apparently little legal control of future land use or title changes for gifted lands under Quebec tax legislation. The federal portion of such a gift is however subject to the federal penalty provision.

## **6. DONATION EXPERIENCE TO DATE**

To date, at least 34 gifts of title, easements, and covenants or servitudes related to properties identified as ecologically sensitive lands have been made across Canada between late 1995 and late 1997 (Table 1). Gifts have been made to about a dozen qualified non-government conservation organisations and at least one municipality. Recipient charities include the Nature Conservancy of Canada, Cataraqui Creek Conservation Authority, Halton Region Conservation Authority, St. Clair Region Conservation Authority, Long Point Region Conservation Authority, Rideau Waterway Trust, Rideau Valley Conservation Authority, Rocky Mountain Elk Foundation, New Brunswick Nature Trust, British Columbia Nature Trust, Nanaimo and Area Land Trust, and the Canadian Nature Federation. The total value of the tax receipts issued by these agencies is estimated to exceed CA\$11 million, with about 90 per cent as gifts of title.

Of these 34 gifts, 28 are title to ecologically sensitive properties, five are gifts of easements and one has been a gift of a restrictive covenant. All are recognised as highly valuable properties for biodiversity and habitat conservation. The area of each of these gifts varies from 4 to 584 hectares. Each has high environmental values. The individual property values of the gifts has ranged from several tens of thousands to over six million dollars.

These gifts are now estimated to cover over 4 000 ha of significant habitat (in some cases incomplete information is available on the size and value of the gifts to date). This includes cliff, beach, and coastal wetland habitats in New Brunswick and Nova Scotia, waterfront wetlands and woodland properties in Ontario, foothill and boreal mixed woodlands in Alberta, grassland habitats in Alberta and Saskatchewan, and ocean front forest and desert steppe areas in British Columbia.

Table 1. Summary of Ecological Gifts to August 1, 1997

Province	Gifts of Land	Gifts of Easements	Gifts of Covenants	Area (ha)	Value (CA\$000)	Recipient Organisations
British Columbia	2	--	1	n.a	860.0	<ul style="list-style-type: none"> <li>• Nature Conservancy of Canada</li> <li>• Nature Trust of British Columbia</li> <li>• Town of Ladysmith</li> <li>• Nanaimo and Area Land Stewards Society</li> </ul>
Alberta	3	3	--	2038.5	6 337.5	<ul style="list-style-type: none"> <li>• Nature Conservancy of Canada</li> <li>• Canadian Nature Federation</li> <li>• Rocky Mountain Elk Foundation</li> </ul>
Saskatchewan	1	--	--	420.1	n.a.	<ul style="list-style-type: none"> <li>• Nature Conservancy of Canada</li> </ul>
Ontario	17	1	--	1071.0	n.a.	<ul style="list-style-type: none"> <li>• Nature Conservancy of Canada</li> <li>• Rideau Valley Conserv. Authority (CA)</li> <li>• Rideau Waterway Foundation</li> <li>• Long Point Region C.A.</li> <li>• Catarqui Creek C.A.</li> <li>• Halton Region C.A.</li> <li>• St. Clair Region C.A.</li> </ul>
Quebec	1	--	--	n.a.	n.a.	n.a.
New Brunswick	3	--	--	137.6	58.0	<ul style="list-style-type: none"> <li>• Nature Conservancy of Canada</li> <li>• Nature Trust of New Brunswick</li> </ul>
Nova Scotia	1	--	--	n.a.	n.a.	<ul style="list-style-type: none"> <li>• Nature Conservancy of Canada</li> </ul>
<b>Total all gifts (6 provinces)</b>	<b>28</b>	<b>5</b>	<b>1</b>	<b>Over 3 577 ha</b>	<b>Over \$11 000</b>	<b>12 NGOs and one municipality</b>

The February 1997 Budget also included notification that Revenue Canada will accept methodologies for valuing conservation easements based on "before-and-after" techniques. Amendments to the *Act* to put this in place were released in draft form in July 1997. Some difficulty was being experienced

by donors because Revenue Canada was not accepting receipts for ecological gifts of easements. Revenue Canada felt that the *Act* specified that only fair market value methods for calculating a tax receipt could be used. All donations of conservation easements since February 1995 will now be able to submit receipts based upon appropriate methodologies (see Attridge, 1997).

## 6.1 Lessons Learned

Since February 1995, when ecological gifts became possible in Canada, donations of land, easements, servitudes, and covenants to municipalities and registered charities are now treated in an equal fashion to gifts to Crown agencies. Co-operation with provincial governments is a key element in this initiative, and recognises the lead role the provinces play for private land stewardship. Provincial easements legislation is an important requirement. The majority of Canadian provinces now have or are drafting legislation to complement the federal initiative. Towards this end, Environment Canada — acting as the lead federal agency — has completed implementation agreements with New Brunswick, Nova Scotia, Quebec, Saskatchewan, and British Columbia that exemplify this co-operation. Similar agreements with other provinces remain under discussion. An administrative agreement with Ontario, limited to a definition of criteria for ecologically sensitive lands, has also been completed.

This initiative recognises that significant progress can be made to conserve biodiversity and establish innovative ways to contribute to Canada's protected areas objectives through conservation on lands in private and corporate ownership — lands that often hold the most threatened ecosystems in Canada. The amendments to the *Income Tax Act* that were adopted by Parliament on 22 June 1996 to facilitate the donation of ecologically sensitive lands and the co-operative efforts of federal, provincial, and non-government partners in the North American Waterfowl Management Plan are excellent examples of such innovative steps.

These amendments concern the donation of ecologically sensitive lands, covenants, easements, and servitudes for conservation purposes. Such donations have thus become an additional tool in national efforts to secure sensitive ecosystems and to conserve biodiversity. These changes extend to all Canadians similar provisions for such donations as are now also in place under the *Quebec Income Tax Act*.

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