

2022 CANADIAN  
LAND TRUST  
SUMMIT

SOMMET NATIONAL  
DES ORGANISMES DE  
CONSERVATION 2022

October 24 to 26 | Ottawa | 24 au 26 octobre

## Thanks to our sponsors!

This project was undertaken with the financial support of:  
Ce projet a été réalisé avec l'appui financier de :



Environment and  
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# ECOLOGICAL GIFTS PROGRAM

## 2022 Canadian Land Trust Summit

October 25, 2022

National perspective  
EGP roles and responsibilities  
Program elements

**Bruno Paris**

**Laura Kucey**

Canadian Wildlife Service

Environment and Climate Change Canada

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Canada 

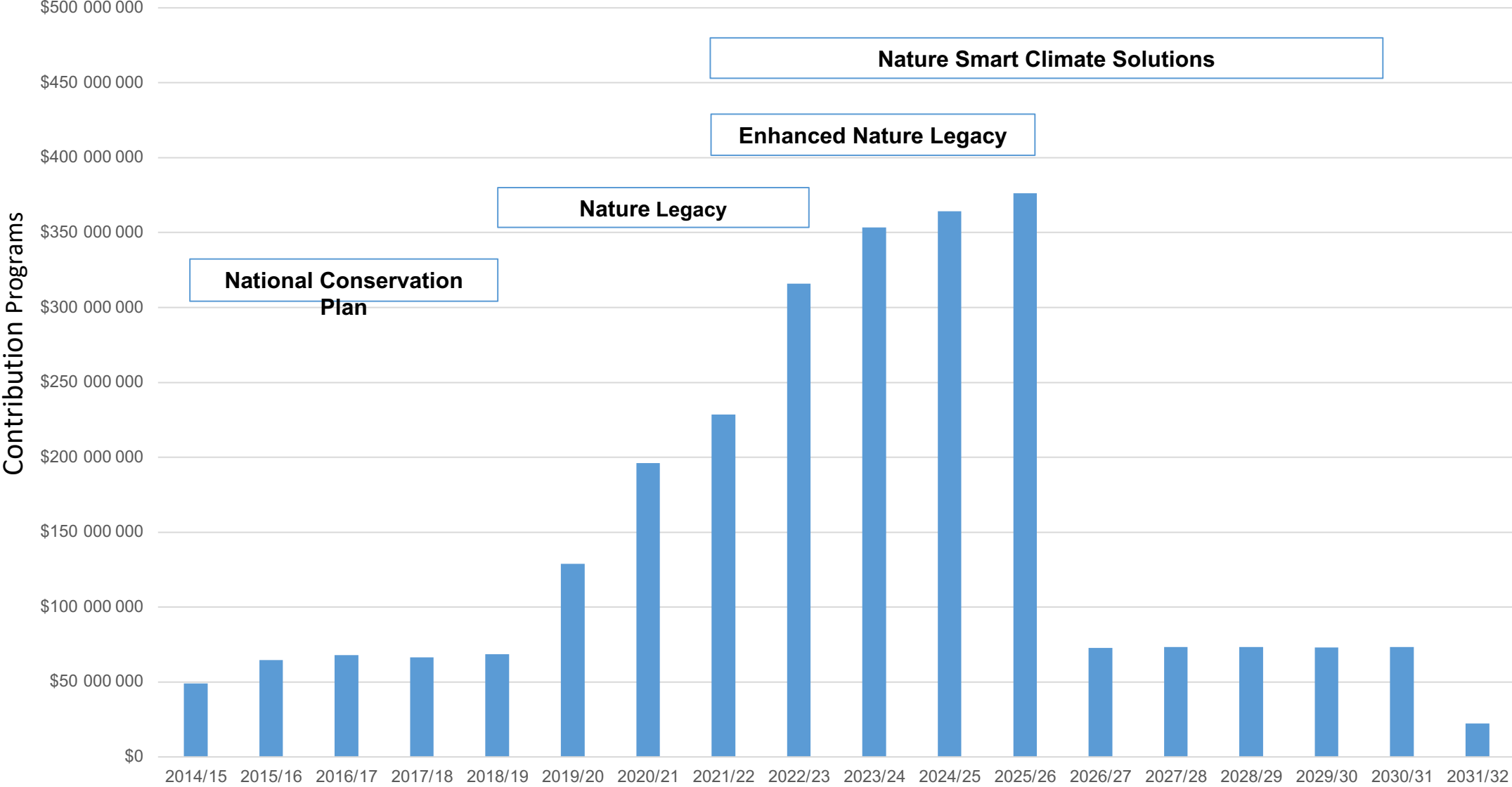
# MINISTER OF ENVIRONMENT AND CLIMATE CHANGE

## MANDATE LETTER (2021)

I ask that you achieve results for Canadians by delivering the following commitments.

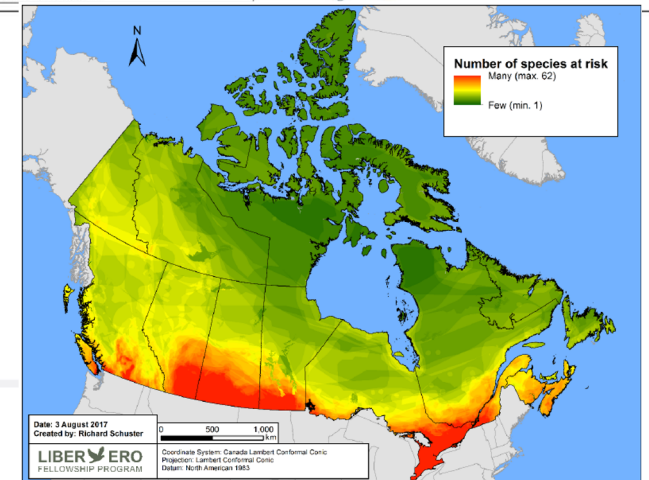
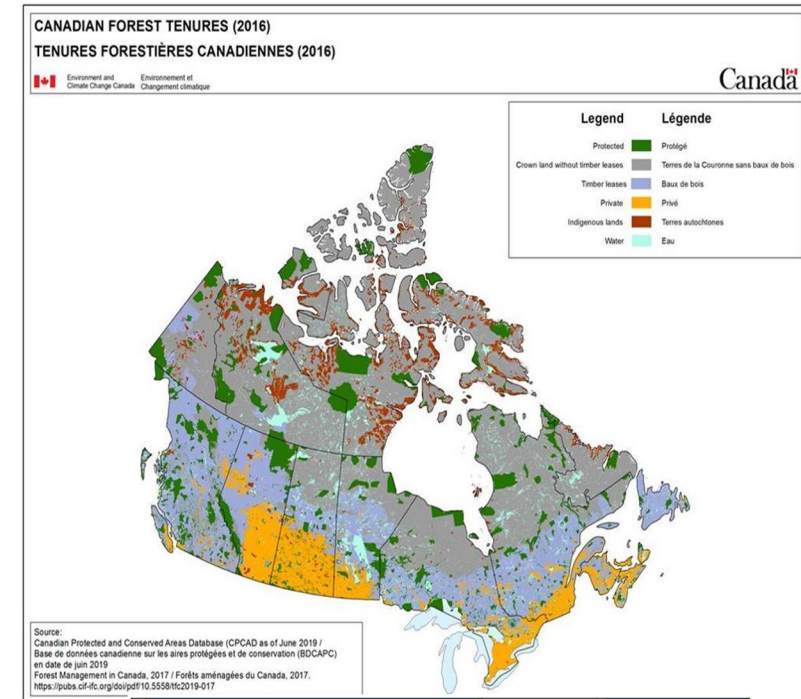
- Continue to work with the Minister of Fisheries, Oceans and the Canadian Coast Guard and partners to ensure Canada meets its goals to conserve 25 per cent of our lands and waters by 2025 and 30 per cent of each by 2030, working to
    - halt and reverse nature loss by 2030 in Canada,
    - achieve a full recovery for nature by 2050 and
    - champion this goal internationally.
  - You will ensure that this work remains grounded in science, Indigenous knowledge and local perspectives.
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# CANADIAN WILDLIFE SERVICE INVESTMENTS IN CONSERVATION

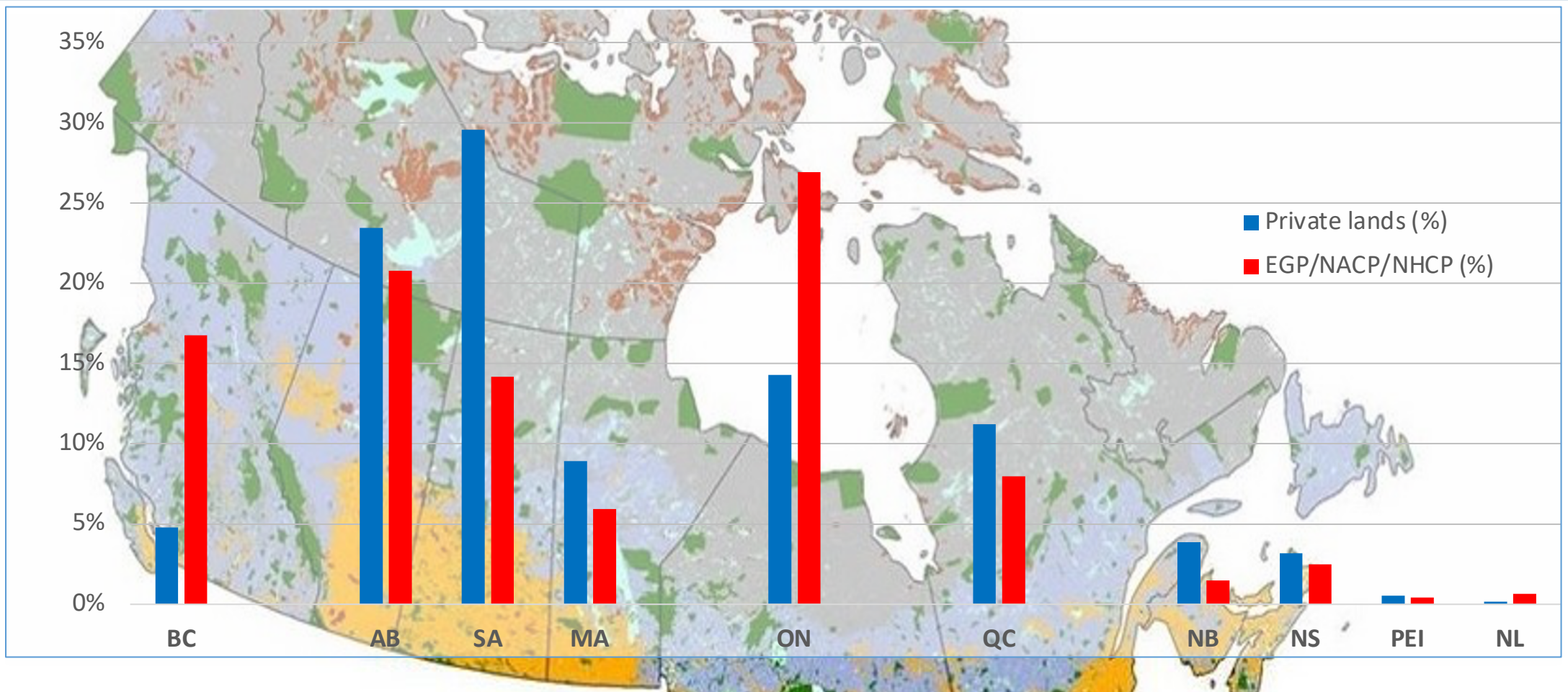


# PRIVATE LAND CONSERVATION IN CANADA

- Private lands constitute 11% of Canada's land and are located mostly in Southern Canada.
- High levels of urbanization and development, widespread agriculture.
- Higher number of species at risk.
- Ecozones with smaller proportions of conserved area.



# PRIVATE LANDS AND AREA CONSERVED: BREAKDOWN PER PROVINCE



Source:  
 Canadian Protected and Conserved Areas Database (CPCAD as of June 2019 /  
 Base de données canadienne sur les aires protégées et de conservation (BDCAPC)  
 en date de juin 2019  
 Forest Management in Canada, 2017 / Forêts aménagées du Canada, 2017.  
<https://pubs.cif-ifc.org/doi/pdf/10.5558/tfc2019-017>

# NATURAL HERITAGE CONSERVATION PROGRAM (NHCP)

- \$125 million over 4 years to secure 235,000 hectares of ecologically sensitive lands
  - Contribute to protecting 25 percent of Canada’s lands and inland waters by 2025 and working towards 30 percent by 2030; and
  - Contribute to strengthening protection and recovery of species at risk and their habitats.
- Recipients: Nature Conservancy of Canada, Ducks Unlimited Canada, local and regional land trusts
- Wildlife Habitat Canada: manages the Land Trusts Conservation Fund
- First three years (2019-20, 2020-21, 2021-22):

	Fee simple (ha)	C.A.* / Others (ha)	Total (ha)	NHCP \$ Million	Cost/ha with ECCC Funds
NCC	110,867	8,714	119,580	76.4	\$639
DUC	574	13,043	13,617	8.2	\$580
Other land trusts	5,955	3,893	9,847	13.3	\$1,300
<b>Total</b>	<b>117,395</b>	<b>25,650</b>	<b>143,045</b>	<b>98</b>	<b>\$685</b>

C.A. (Conservation Agreements): servitudes, easements and covenants

# ECOLOGICAL GIFTS PROGRAM (EGP): INCOME TAX ACT AND THE QUEBEC TAX ACT



- **Significant tax benefits** for landowners who donate land, or a partial interest in land, to a qualified recipient
  - No tax on capital gains for capital gifts
  - No limit on the total value eligible for deduction/credit in any one year
  - A ten-year period to apply the receipt to income
- The Minister of the **Environment and Climate Change**, or designate:
  - **Certifies** the ecological sensitivity of the land (or partial interest)
  - **Approves** the recipient to receive the Ecological Gift (charities, municipalities and public bodies)
  - **Certifies** the fair market value of the donation
- **Restrictions / Safeguard**
  - Outlines tax for unauthorized dispositions or changes in use of Ecological Gifts





# EGP ELEMENTS & DOCUMENTS



## 1. Ecological Sensitivity Certification

*Certificate of Ecologically Sensitive Land, Recipient Identification and Approval*

## 2. Appraisal Review and Determination

*Notice of Determination of Fair Market Value*

## 3. Ecological Gift Fair Market Value Certification

*Statement of Fair Market Value of an Ecological Gift*

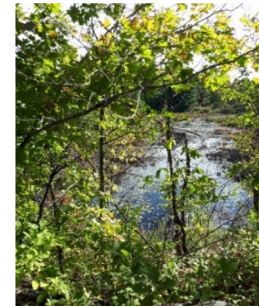
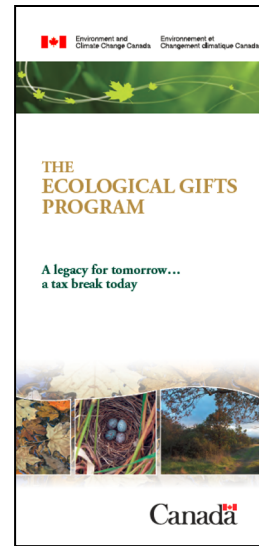
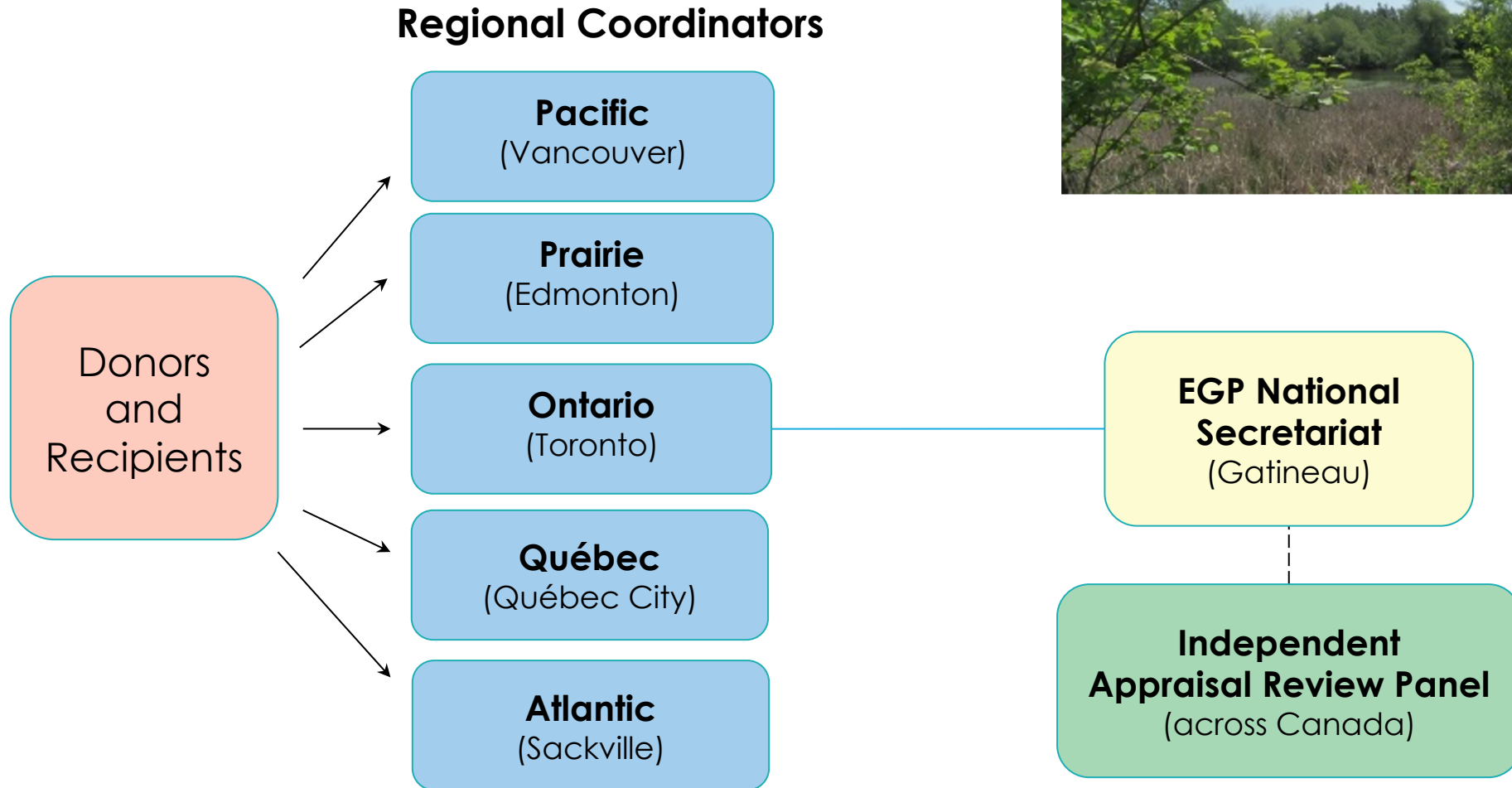
**Program timing is dependent on complete submissions to the EGP**

If the gift is a Conservation Agreement, a **Baseline Documentation Report** is required within 6 months of the donation

**Disposition / Change in Use of an Ecological Gift**, if applicable in the future

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# EGP STRUCTURE



# RECIPIENT RESPONSIBILITIES

## EGP Recipients

- registered environmental charities
  - municipalities and public bodies performing a function of government
  - Federal, provincial and territorial governments
- Coordinating the donation and EGP submissions with the donor
  - Long-term management and conservation of the Ecological Gift and its ecologically sensitive features



## Environmental charities eligibility:

- Demonstration of **financial, technical and human resource capacity** to receive, manage and monitor Ecological Gifts
  - Evidence that the organization has adopted, or has **committed to adopt, national or provincial guidelines to direct its land acquisition and management practices**
-

# NATIONAL / PROVINCIAL GUIDELINES

## Canadian Land Trust Standards and Practices (CLT S&P 2019)

- Ethical and technical guidelines for the responsible operation of a land trust in Canada 12 broad standards and 91 practices
- In the Province of Québec a recognized set of standards and practices are:  
Guide des bonnes pratiques en intendance privée: aspects juridiques et organisationnels



## **EGP policies, submissions and requirements are based on CLT S&P**

A charitable organization wishing to receive an ecological gift in Québec must also meet the requirements of the *Ministère de l'Environnement et de la Lutte contre les changements climatiques*

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# ECOLOGICAL SENSITIVITY

Assessment of the ecological sensitivity of the proposed ecological gift lands

*The land is certified by that Minister, or by a person designated by that Minister, to be ecologically sensitive land, the conservation and protection of which is, in the opinion of that Minister or the designated person, important to the preservation of Canada's environmental heritage*

**National Criterial** (regional criteria where applicable)

***Certificate of Ecologically Sensitive Land, Recipient Identification and Approval***

**In Québec: *Visa pour dons de terrains ou de servitudes ayant une valeur écologique***

**issued by:** *Ministère de l'Environnement et de la Lutte contre les changements climatiques*



# DETERMINING THE FAIR MARKET VALUE



Ecological Gifts are made possible by provisions within the *Income Tax Act of Canada*

## Tax benefits are determined based on the fair market value of the gift

Rigorous, fully accountable fair market value review and certification process developed in response to the **Minister's new responsibilities announced in the 2000 federal Budget, and Canada Revenue Agency questions around fair market value of gifts up to that point**

- Panel: ECCC, Appraisal Institute of Canada, Canada Revenue Agency and Finance Canada
- Given the cost to the public purse of the tax incentives associated with ecogifts, strict standards and close scrutiny to standards is desirable.
- Creation of an Independent **Appraisal Review Panel**
- Similar process for donations of certified Canadian cultural property with the *Canadian Cultural Property Export Review Board*

# APPRAISAL REVIEW PANEL (ARP)

Contracted by ECCC through an open call for proposals

ARP role:

1. Review appraisals
2. Recommend the fair market value to the Minister

**Based on the ARP recommendation, the Minister will certify the fair market value of the Ecological Gift for the donor to use for tax purposes**

- The work of the Panel supports the Minister of the Environment in meeting his obligations under the *Income Tax Act*
- Once the ***Notice of Determination of Fair Market Value of an Ecological Gift*** is issued, the value applies to the appraised property for all charitable gifts under the *Income Tax Act* for a two year period



# EGP APPRAISAL SUBMISSIONS

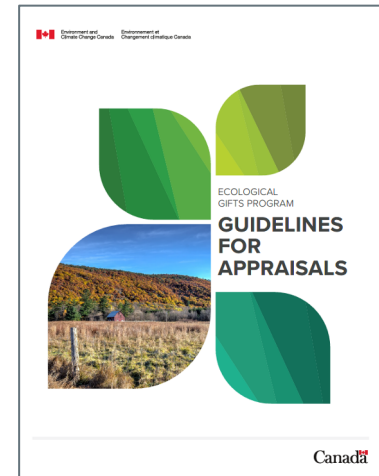
Appraisals for Ecological Gifts **must meet** the requirements of the **Canadian Uniform Standards of Professional Appraisal Practice** or, in Québec, **Les normes de pratique professionnelle des évaluateurs agréés**

**Because of regular updates, appraisers must ensure that they consult the most recent version of these documents**

Submissions must be in the form of an independent Narrative Appraisal Report: [EGP Guidelines for Appraisals \(2019\)](#)

- The Panel will not accept unsupported assumptions
- The EGP does not permit hypothetical conditions in appraisals, except where necessary for a reasonable analysis of the subject property
- Unsubstantiated opinions and unsupported conclusions are not acceptable

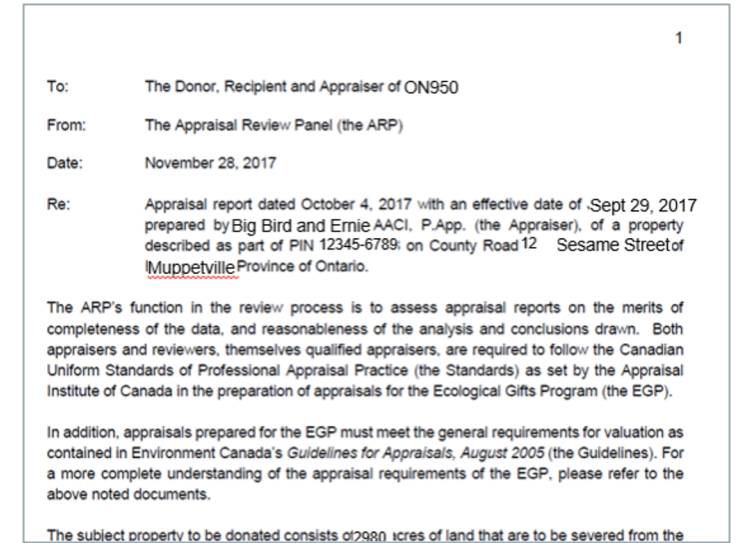
To complete a file to uphold these standards, the ARP **may need to request additional information** from the original appraiser and/or hire additional expert resources





# QUESTION: WHY DID MY FILE RECEIVE A MEMO?

- Once a file is under review by the Appraisal Review Panel, a memo may be issued for a number of reasons
- In most cases, **additional information** or **clarification** is needed to **support the conclusions** reached in the report
- A memo will outline the appraisal requirements and document which sections require additional information or support



## Basis for recommendation:

- meets *EGP Guidelines for Appraisals*
- **analysis, opinions** and **conclusions** are **appropriate, reasonable** and support the proposed **FAIR MARKET VALUE** on an **OPEN MARKET**

# ARP MEMOS

Examined memos in one region issued between 2019 – present

All of the issues raised in the memos fell into these categories:

- Insufficient Information **provided**
- Insufficient Analysis **conducted**
- Insufficient Comparable Selection
- Incorrect Information **provided**
- Incorrect Methodology **according to Guidelines**
- Incorrect Highest and Best Use **identified**
- Impasse with Appraiser **over issues identified**

**In most cases, further explanation and inclusion of evidence, justification and rationale satisfied the questions posed in the memo**


**The ARP does not have a mandate to lower the submitted appraised value of a donation**



# INCOME TAX ACT – SECTION 207.31

## DISPOSITION / CHANGE IN USE OF AN ECOLOGICAL GIFT



 Environment Canada / Environnement Canada

[www.ec.gc.ca](http://www.ec.gc.ca)

### 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 land<sup>1</sup> 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.

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.

**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.*

Photo: Raymond Kotchorak © Environment Canada, 2014

<sup>1</sup> 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 "interest" or "real right" may vary among provincial and territorial legislation, so always consult the relevant legislation for exact definitions and information pertaining to these types of interests.



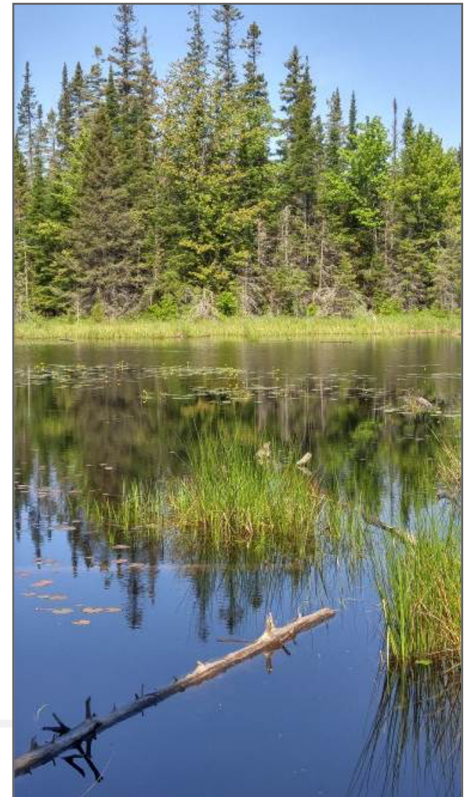
# WHAT IS A DISPOSITION?

## Disposition:

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**

## Ontario examples: Disposition Requests

- Transfer to another organization
- Registration of an interest on title
  - Conservation Easement Agreement (CEA) amendment
  - CEA with an additional conservation organization
  - Funding agreement



# WHAT IS A CHANGE IN USE?



## Change in Use:

- any action that results in or could result in a diminution of the ecological condition or protection of the ecological gift
- failure to take reasonable action to manage and protect the ecologically sensitive features of the ecological gift
- changing any of the terms of a conservation agreement, which do not constitute a disposition
- failure to enforce the terms of the conservation agreement, which results in or could result in negative impacts on the ecologically sensitive features of the property
- failure 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

## Ontario examples: Change in Use Requests

- Conservation Easement Agreement amendments
- Invasive species removal
- Restoration efforts that require some loss to gain substantial benefits
- Remediation that requires heavy equipment
- Removal or replacement of structures, trail networks, parking lots
- Amend property boundaries, severances (CIU and disposition)

**Scope and scale of the properties,  
circumstances and rationale,  
geography, physical attributes,  
proposed activities:**  
VASTLY different between requests

# BEFORE A DISPOSITION OR CHANGE IN USE IS AUTHORIZED....

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
2. the change in use is **within the control of the recipient** of the Ecological Gift

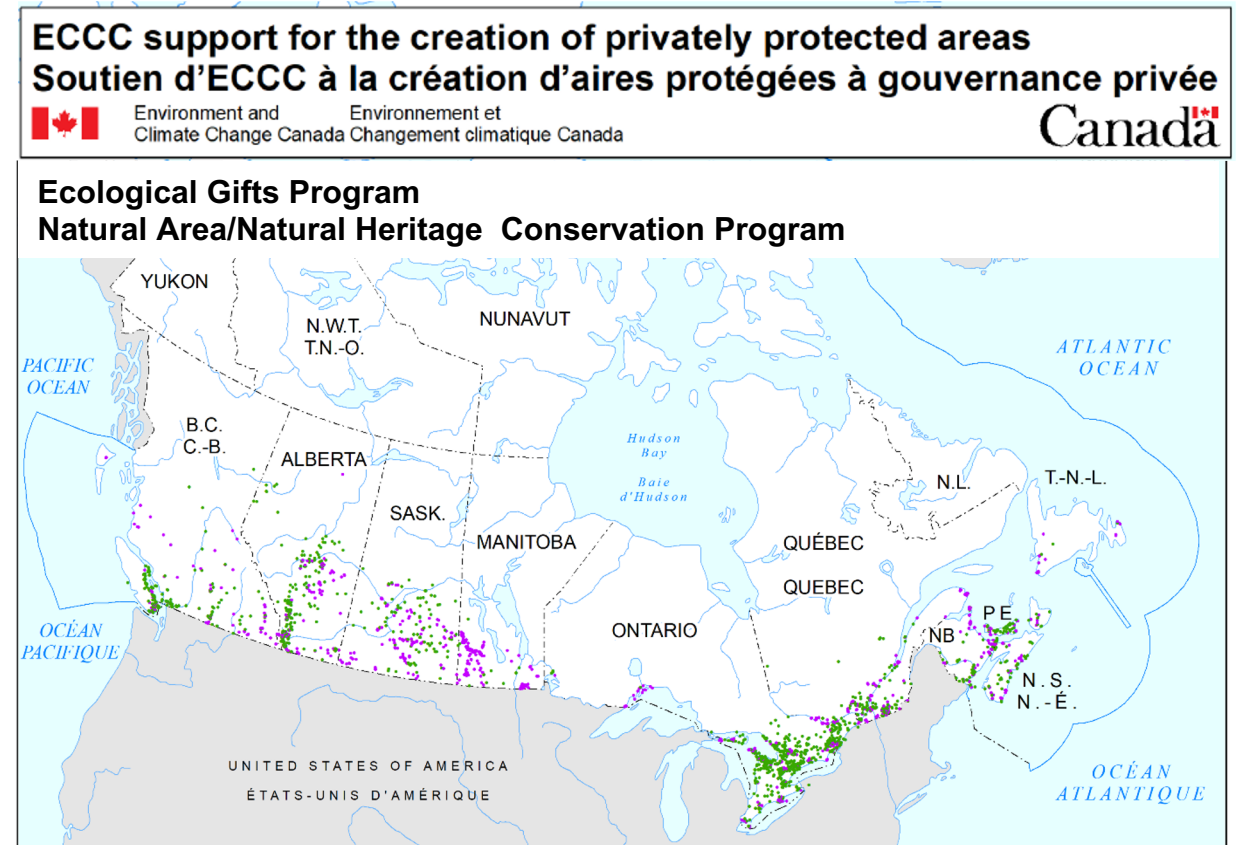


# Since 1995, 1735 Ecological Gifts valued at over \$1.1 Billion have been donated across Canada, protecting nearly 220,000 hectares of wildlife habitat

- Highest number of Ecological Gifts: Ontario (702)
- Highest total value: Alberta (\$360 Million)
- Highest total area conserved: Alberta (83,000 ha)

## Top 10 Land Trusts (area of Ecological Gifts):

- Nature Conservancy of Canada / Conservation de la nature Canada
- Southern Alberta Land Trust Society
- Ducks Unlimited Canada / Canards Illimités Canada
- Escarpment Biosphere Conservancy
- The Nature Trust of British Columbia
- Western Sky Land Trust
- Nature Trust of New Brunswick
- Kawartha Land Trust
- Couchiching Conservancy
- Nova Scotia Nature Trust



# THANK YOU

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## **Ecological Gifts Program**

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Environment and Climate Change Canada

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Gatineau, QC K1A 0H3

1-800-668-6767 fax: 819-938-4066

[pde-egp@ec.gc.ca](mailto:pde-egp@ec.gc.ca)





# RESOURCES

## EGP Publications

- Application Form and Instructions: - Application for Appraisal Review and Determination of an Ecological Gift
- Donations and Income Tax Scenarios
- Confirmation that Ecogifts are Eligible for Split-receipting
- Disposition or Change of Use of Ecological Gifts
- Ecological Gifts Program Brochure
- The Canadian Ecological Gifts Program Handbook
- Engaging an Appraiser to Appraise an Ecological Gift
- Guidelines for Appraisals
- Retaining the Right to Use Land Donated as an Ecological Gift

## Canada Revenue Agency (CRA): 1-800-267-2384

- Gifts and Income Tax, P113
  - Gifts and Official Donation Receipt , IT-110R3
  - What is a gift (Web)
  - Operating a registered Charity (Web)
- 



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