



Staff Report

If this information is required in an alternate accessible format, please contact the Accessibility Coordinator at 905-623-3379 ext. 2131.

Report To:	General Government Committee	
Date of Meeting:	February 18, 2020	Report Number: EGD-003-20
Submitted By:	Ron Albright, Acting Director of Engineering Services	
Reviewed By:	Andrew C. Allison, CAO	Resolution# GG-091-20
File Number:	PA.FarewellCreekTrailPhase 2.01	By-law Number:
Report Subject:	Farewell Creek Trail Phase 2 Ecological Gifts Program Update	

Recommendations:

1. That Report EGD-003-20 be received;
2. That staff be authorized to submit a formal request to Environment Canada to proceed with the unauthorized change in use, as defined by the *Income Tax Act*, of building Phase 2 of the Farewell Creek Trail;
3. That the tax levied by the Federal Government (estimated to be \$22,500) for and unauthorized change in use as defined in Section 207.31 (a) (ii) representing 50% of the fair market value of the ecological gift lands at the time of the unauthorized use (2020) be funded from the 2019 Capital account 110-32-325-83288-7401, Farewell Creek Trail, Phase 2; and
4. That additional funding for the Council recommended trail route, as per Resolution #C-204-19, through these ecological lands be considered for approval as part of the 2020 Budget.

Report Overview

During the Fall of 2019, Engineering Services was informed that the lands at the most western part of Phase 2 of Farewell Creek Trail were part of the Federal Government's Ecological Gift program as defined in the *Income Tax Act*. As staff reviewed the terms associated with the Ecological Gift lands, it became apparent that Clarington would have to consult with the Canadian Government through Environment Canada to determine if the construction of a recreational trail would be a permitted use within these lands. We have received an informal response from Environment Canada that it would not be a permitted use. This report is prepared to seek approval from Council to make a formal application to Environment Canada to permit an unauthorized use, being trail construction, and request funding for the applicable tax levied by Canada from the 2019 Capital Budget approved for Farewell Creek Trail, Phase 2.

1. Background

Ecological Gift Lands

- 1.1 During the fall of 2019 while considering the award of geotechnical services consulting for slope stability investigation, analysis and report of Farewell Creek Trail Phase 2, the Planning Department advised Engineering Services that the most western lands on which the trail was proposed were part of a 2001 Ecological Gift. Attachment 1 shows the location of the subject lands and the limits of Phase 2 of our proposed trail. These lands were donated to the Municipality of Clarington by the developer of the adjacent subdivision lands and are subject to the recipient responsibilities as defined by the Canadian Ecological Gifts Program as per the *Income Tax Act*. Additional information regarding the Ecological Gift Program can be found at the following Government of Canada link: [Ecological Gift Program Handbook](#).
- 1.2 In December 2019, Engineering staff reached out to Environment Canada to determine if the construction of the trail would be a permitted use on the Ecological Gift lands. Environment Canada has reviewed our request and are in the process of preparing a recommendation to their Regional Director to deny our request. The main reasons include: the removal of vegetation; impervious asphalt surface; and that the trail could simply avoid the ecological gift lands by taking a different route. Although a consideration, the exact location of the trail through the lands was not as concerning as the imperviousness of the surface and the removal of vegetation. Environment Canada will be sending Engineering Services a letter informing us of the Regional Director's decision.
- 1.3 While Environment Canada staff does not consider the Trail construction consistent with the intended use under the Ecological Gift Program, Clarington has the option to move

forward with construction. This would require Clarington to send a letter of intent to go ahead with an unauthorized change in use and confirm that we are willing to accept the federal tax associated with the request. Once they receive our request, Environment Canada would arrange for an appraisal of the property to determine the federal tax amount Clarington would pay, which would be equal to 50% of the fair market value at time of change in land use, i.e., 2020. A summary of this process and disposition and change in use are outlined in Attachment 2: Disposition or Change in Use of Ecological Gifts - Fact Sheet. It is important to note that if Clarington chooses this option, it would jeopardize our ability to receive Ecological Gifts in the future, however, considering the restrictions these gifts put on our ability to alter the land, it would be recommended that the Municipality does not accept Ecological Gifts in the future.

- 1.4 Although Environment Canada would have to undertake the appraisal to ascertain the value of the land and the amount we would be taxed, based on our past experience with these types of undevelopable valley lands, a rough cost of \$5,000 per acre can be used to estimate the land value. This would amount to a total estimated property value of \$45,000 based on the 9.0 acre parcel size. The federal tax associated with property value would be estimated at \$22,500.
- 1.5 Should Clarington choose this option, going through the process and paying the tax will not change the status of the property as an Ecological Gift, it will simply allow us to make a payment in order to build our trail. If Clarington wishes to change the use again in the future (e.g., to construct another trail), we would be subject to the tax again.

2. Discussion

Next Steps

- 2.1 Considering the importance of this trail connection and the funding that we have received for its construction through the Ontario Municipal Commuter Cycling program, it is recommended that staff be authorized to send Environment Canada a letter of intent to request an unauthorized change in use to allow staff to move forward with detailed design, tendering and construction of Phase 2 of the Farewell Creek Trail.
- 2.2 Funding for the federal tax that would be required to permit the trail construction on the Ecological Gift lands can be provided from the approved 2019 capital budget for Phase 2 of the Farewell Creek Trail, Account #110-32-325-83288-7401.
- 2.3 Now that Clarington has informally heard back from Environment Canada regarding the Ecological Gift lands, and provided Council is in support of the recommendations to move forward with the necessary steps to have Phase 2 of the Farewell Creek constructed, it is recommended that Council consider report EGD-018-19 and lift it from the table (tabled as per resolution #C-448-19).

Additional Budget Request

- 2.4 At the May 21, 2019 Council meeting, Resolution #C-204-19 was passed by Council stating:

That Staff be directed to site the ending of the Farewell Trail in the ravine north of Pinedale Blvd. but south of the original route such, that it remains above the top of bank for the creek, and south of the drainage manhole; and

That any additional cost be funded at the discretion of the Director of Finance.

The cost of this Council recommended route is expected to be approximately \$450,000 more than the initial staff recommended route, increasing the total trail cost from the original budgeted amount of \$1,100,000 to approximately \$1,550,000. It is recommended that the estimated additional \$450,000 of funding be considered for approval as part of the 2020 capital budget in order that staff move forward with the design. The delay in completing this project has the potential to jeopardize funding which Clarington has been granted through the Provinces Ontario Municipal Commuter Cycling (OMCC) program. The deadline to have funded works substantially completed is December 30, 2020.

- 2.5 As part of the 2020 capital budget additional funding for Council's recommended route, staff recommend the following apportionments for the additional estimated costs:

\$196,000	Tax Levy
\$118,900	Ontario Municipal Commuter Cycling Program
\$95,490	Development Charges – Parks
\$29,000	Federal Gas Tax Reserve
<u>\$10,610</u>	Municipal Capital Works Reserve
\$450,000	

3. Concurrence

This report has been reviewed by the Director of Finance who concurs with the recommendations.

4. Conclusion

It is respectfully recommended that Council provide direction to staff.

Staff Contact: Ron Albright, Acting Director of Engineering Services, 905-623-3379, Ext. 2302
or ralbright@clarington.net

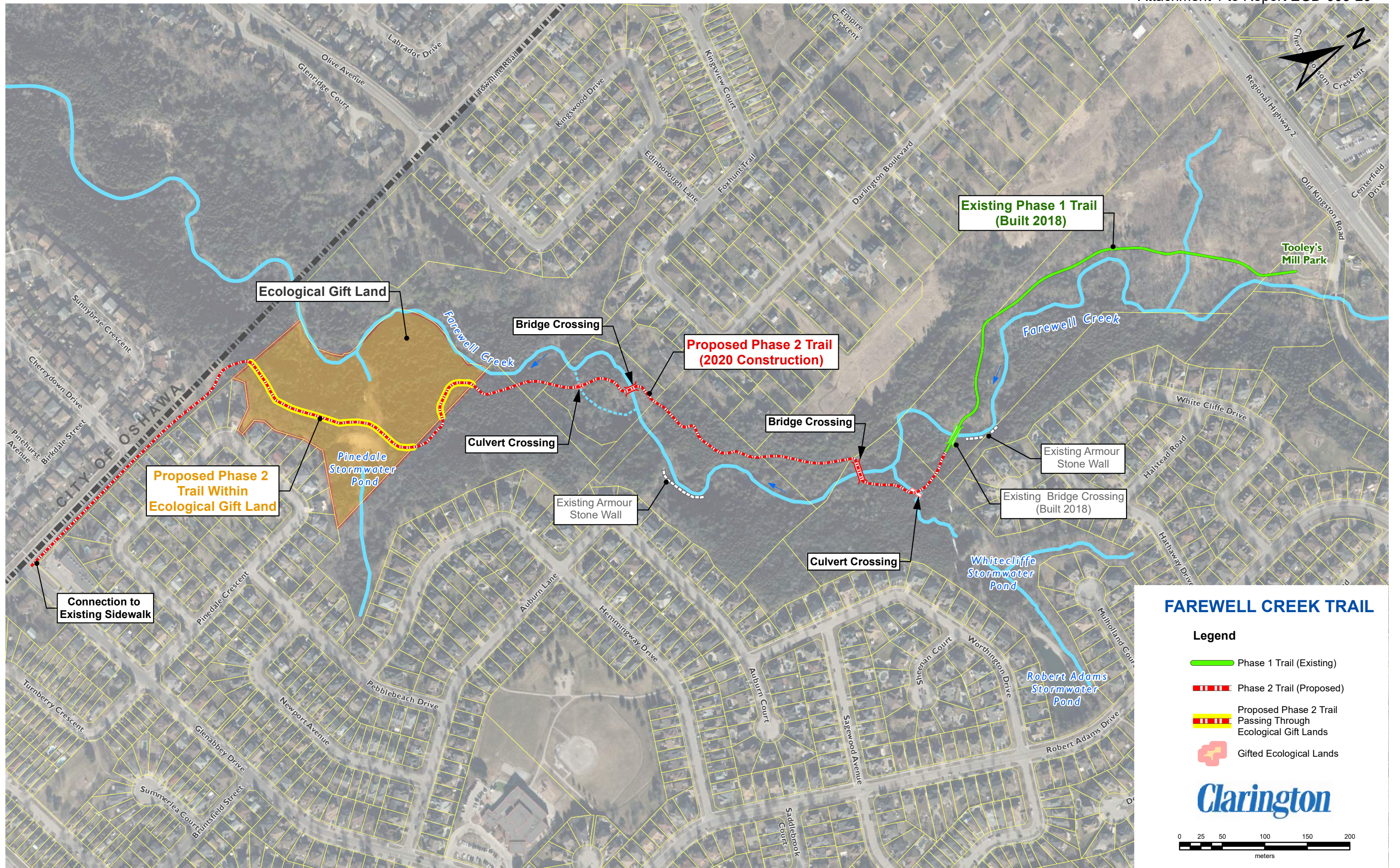
Attachments:

Attachment 1 – Map of Ecological Gift lands and Phase 2 of Farewell Creek Trail

Attachment 2 – Disposition or Change in Use of Ecological Gifts - Fact Sheet

Interested Parties:

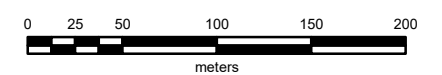
There are no interested parties to be notified of Council's decision.



FAREWELL CREEK TRAIL

Legend

- Phase 1 Trail (Existing)
- Phase 2 Trail (Proposed)
- Proposed Phase 2 Trail Passing Through Ecological Gift Lands
- + Gifted Ecological Lands



Environment
CanadaEnvironnement
Canada
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 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.

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 Kotchorek © 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 Québec* 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.



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 an eligible interest or right in land), constitutes a disposition for the purposes of section 207.31 of the ITA.

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

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



Photo: © Frontier Digital Arts, 2014

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

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

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

CHANGE IN USE

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

- a. undertakes any action that results in or could result in a diminution of the ecological condition or protection of the ecological gift;
- b. fails to take reasonable action to manage and protect the ecological condition of the ecological gift;
- c. changes any of the terms of an eligible interest or right in land (conservation easement, covenant or real servitude), which do not constitute a disposition; or
- d. fails to enforce the terms of the conservation easement, covenant or real servitude, which results in or could result in negative impacts on the ecological condition of the property.

Environment Canada may consider supplemental information such as relevant studies, expert advice and property- or situation-specific circumstances to determine if the proposal is a change in use.

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

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



Photo: © Thinkstockphotos, 2014



ENVIRONMENT CANADA'S APPROACH TO CONSIDERING A REQUEST FOR AUTHORIZATION

Since the circumstances of each request for authorization of a proposed disposition or change in use of an ecological gift are unique, each request will be reviewed and 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 or better than that provided for under the existing arrangement;
- whether the proposed disposition or change in use is beneficial to the long-term conservation and management of the ecologically sensitive features on the subject land;
- in the case of a proposed disposition, whether the intended new recipient of the ecological gift of land or eligible interest or right in land is qualified to receive an ecological gift under the criteria of the EGP and has the capacity to manage the property so as to ensure and maintain its long-term ecological integrity;
- in the case of a proposed disposition, whether it is a sale or a gifted transfer;
- in the case of an eligible interest or right in land, whether the new or amended conservation easement, covenant or real servitude is: a) consistent with the original purpose, and b) registered at least at the same level of priority as the original; and
- whether the disposition or change in use is within the control of the recipient of the ecological gift.

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

Note:

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

HOW TO REQUEST AN AUTHORIZATION FOR A DISPOSITION OR CHANGE IN USE

Requests for authorization must be sent to the regional coordinator of the EGP in the province where the ecological gift is located. Environment Canada will only consider written requests made by the recipient that provide clear details as to the precise nature of the proposed disposition or change in use.

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

- a letter of request, signed by the registered owner/holder of the ecological gift (the landowner or easement, conservation covenant or real servitude holder), that describes the proposed disposition or change in use;
- a rationale for the proposed disposition or change in use;
- the applicant's assessment (including, if available, a copy of [or reference to] the baseline documentation outlining the state of the lands, and the ecological features of interest, at the time of donation) of the potential effects of the proposed disposition or change in use on the ecologically sensitive features of the land as well as the potential impacts on the future protection of the ecologically sensitive features;
- priority agreements from all registered charge holders in the case where amendments to eligible interests or rights in land 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 eligible interest or right in land; and
- in the case of a proposed disposition, the name, mailing address and telephone number of both the transferor and the transferee.

Environment Canada may solicit additional information specific to each request, if deemed necessary.



IT IS BETTER TO ASK BEFORE ACTING...

Each request for authorization is unique. Ecological gifts recipients considering a disposition or change in use are encouraged to contact their respective EGP regional coordinator to discuss any questions.

The EGP National Secretariat may be reached at: **1-800-668-6767**

For more information about the EGP, visit: **www.ec.gc.ca/pde-egp**

Photo: Ron Bazin © Environment Canada, 2014

Paper: ISBN 978-1-100-23198-3
Cat. No.: CW66-274/2014E
PDF: ISBN 978-1-100-23199-0
Cat. No.: CW66-274/2014E-PDF

For information regarding reproduction rights, please contact Environment Canada's Inquiry Centre at 1-800-668-6767 (in Canada only) or 819-997-2800 or email to enviroinfo@ec.gc.ca.

Photos: © Thinkstock, Frontier Digital Arts, and Environment Canada – 2014

© Her Majesty the Queen in Right of Canada,
represented by the Minister of the Environment, 2014

Aussi disponible en français

Additional information can be obtained at:

Environment Canada
Inquiry Centre
10 Wellington Street, 23rd Floor
Gatineau QC K1A 0H3

Telephone: 819-997-2800
Toll Free: 1-800-668-6767 (in Canada only)
Fax: 819-994-1412
TTY: 819-994-0736
Email: enviroinfo@ec.gc.ca

Ecological Gifts Program
Environment Canada
Canadian Wildlife Service
351 St. Joseph Boulevard
Gatineau QC K1A 0H3
Email: pde-egp@ec.gc.ca
Website: www.ec.gc.ca/pde-egp