

CORPORATION OF THE TOWN OF GANANOQUE

BYLAW NO. 2010-74

BEING A BYLAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT BETWEEN HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF TRANSPORTATION (MTO) TO PROVIDE FOR A TRAIL UNDER PASS UNDER HIGHWAY 401.

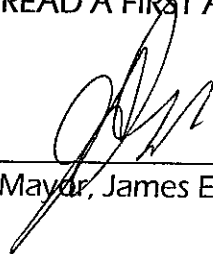
WHEREAS, the Municipal Act c. 25 S.O. 2001 authorizes that a municipality may enter into an agreement with her Majesty the Queen in right of Ontario for the provision of programs;

AND WHEREAS the Town of Gananoque has applied to the Ministry of Transportation to allow for a trail to go under The MacDonald Cartier Freeway, commonly known as Highway 401.

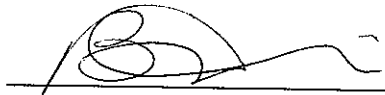
NOW THEREFORE the Council of the Corporation of the Town of Gananoque hereby enacts as follows:

1. That the Mayor and Clerk are hereby authorized to enter into and sign and seal an Agreement as noted in the preamble above, and for same are designated as the official signing officers of the Corporation of the Town of Gananoque;
2. That this by-law may be cited for all purposes as "The Town of Gananoque - MTO Trails Bylaw";
3. And that this by-law shall come into force and take effect upon its final passing.

READ A FIRST AND SECOND TIME this 21st day of September, 2010.

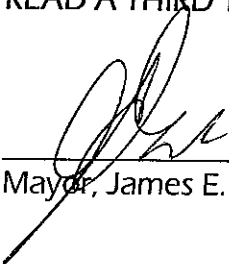


Mayor, James E. Garrah




Clerk, Bonnie Dingwall

READ A THIRD TIME, passed, signed, and sealed this 19th day of October, 2010.



Mayor, James E. Garrah



Clerk, Bonnie Dingwall

PERMISSION TO USE LAND
TRAIL AGREEMENT

THIS AGREEMENT made between:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF
ONTARIO, REPRESENTED BY THE MINISTER OF
TRANSPORTATION FOR THE PROVINCE OF ONTARIO**
(hereinafter referred to as the "Ministry");

OF THE FIRST PART

- and -

THE TOWN OF GANANOQUE
(hereinafter referred to as the "Town of Gananoque")

WHEREAS the Ministry is the owner of lands which are not highway, more particularly legally described in the attached Schedule "A" (the "Ministry Lands");

AND WHEREAS the Town of Gananoque establishes and maintains recreational trails for use by any person on or using a trail pursuant to Ministry trail permits;

AND WHEREAS the Town of Gananoque has requested the Ministry's permission to use the Ministry Lands for the purpose of using and maintaining a recreational trail (the "Trail") and related construction, with prior approval, the approximate location of which is illustrated in the sketch attached as Schedule "B";

AND WHEREAS the Town of Gananoque's request to build, use and maintain the Trail;

AND WHEREAS the Ministry has accepted this request with the understanding that the Ministry, the Town of Gananoque would enter into an agreement to govern the use and maintenance and construction, of the Trail.

NOW THEREFORE this Agreement witnesseth that in consideration of the covenants and premises contained herein, and the sum of ten dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

1.0 LICENCE AND TERM

1.1 Licence

1.1.1 The Ministry grants to the Town of Gananoque a non-exclusive authorization, being a limited approval to use the Ministry Lands, on an "as is" basis, for the purpose of using, maintaining and constructing a Trail, subject to the terms and conditions of this Agreement.

1.1.2 The Ministry will not grant permission to any other person or group to use the Trail for a recreational purpose.

1.1.3 The Town of Gananoque acknowledges and agrees that it does not have any proprietary interest in the Ministry Lands and does not have any right to enter on or use Ministry Lands for any other purpose, except in accordance with the terms and conditions of this Agreement.

1.1.4 The Town of Gananoque acknowledges and agrees that it does not have any right to assign this Agreement.

1.1.5 The Town of Gananoque acknowledges and agrees to secure the Trail and take reasonable steps to prevent it from being used by any person during the "off season" except for the purposes of this Agreement or by a Ministry agent.

1.2 Term

The term of this Agreement shall be for ten (10) years, commencing on the First (1) day of September, 2010, and ending on the First day (1) of September, 2020.

2.0 RESPONSIBILITIES

2.1 Improvements

2.1.1 The Town of Gananoque shall consult with the Ministry regarding proposed changes and improvements to the Trail and shall not undertake any construction, improvements, enhancements, or changes to Ministry Lands (the "Work") without first obtaining the written approval of the Ministry.

2.1.2 Any such approval or review by the Ministry under this Agreement shall not relieve the Town of Gananoque of any of its obligations or constitute any waiver or representation by the Ministry as to such subject matter and, in no event shall such approval or review by the Ministry be a representation regarding the fitness or soundness of the subject matter.

2.1.3 The Town of Gananoque shall ensure that any such construction, improvements, enhancements or changes shall be in compliance with all laws, including but not limited to the *Environmental Assessment Act*, the *Environmental Protection Act* and the *Ontario Water Resources Act*, as such statutes may be amended from time to time.

2.1.4 The Town of Gananoque is also responsible for obtaining all necessary approvals in respect of the location and construction of the Trail and any crossings (e.g. ice, culverts, bridges) from all applicable regulatory agencies (e.g. Conservation Authority, Ministry of Natural Resources, Department of Fisheries and Oceans, etc.).

2.1.5 The Town of Gananoque shall not construct any building on the property for the purpose of, or that is capable of, being occupied.

2.2 Bridges and other Crossing Structures

2.2.1 The Ministry shall not be liable for any costs whatsoever, including but not limited to legal costs, incurred by the Town of Gananoque in the planning, design, construction, use or maintenance of any water or land crossing structure (e.g. bridge, culvert, underpass) as part of the Trail.

2.2.2 The construction of any crossing structure (e.g. bridge, culvert, underpass) by the Town of Gananoque for use as part of the Trail shall be subject to the supervision of and be in accordance with drawings, elevation plans, reference plans, other plans required by a professional engineer and deemed acceptable to him or her, prior to construction being commenced. Said design and construction of crossing structures shall be in accordance with "Guidelines for the Design of Bridges, June 2010", as it may be amended from time to time, produced by Heartland Environmental Design.

2.2.3 Any structural drawing and construction drawings for a crossing structure shall be signed and sealed by the professional engineer, who shall be licensed to engage in the practice of professional engineering under the *Professional Engineers Act*, but shall not include a person who holds a limited licence issued under that Act;

- 2.2.4 The Town of Gananoque shall be fully responsible for and shall maintain all bridges and other crossing structures during the term of this Agreement. The Town of Gananoque shall arrange for the inspection of all bridges, including culverts with openings greater than three metres, prior to the commencement of use of the crossing structure pursuant to this Agreement and, in the event the Agreement is renewed for consecutive subsequent terms, the obligation to provide an inspection report to the Ministry shall be once every year thereafter, prior to the commencement of use for each snowmobile season. Said inspection shall be carried out under the direction of a professional engineer.
- 2.2.5 The said professional engineer shall prepare a report on the condition of all bridges, including culverts with openings greater than three metres, and shall make recommendations listing required maintenance, which shall be sent to the Town of Gananoque. A copy of the professional engineer's certification that each bridge has been inspected and is safe, shall be sent to the Ministry contact listed in Section 6 of this Agreement.
- 2.2.6 Except where the termination provisions of Section 5.0 apply, where the Town of Gananoque proposes to discontinue use of the bridges or crossing structures, or any of them, the Town of Gananoque shall give the Ministry at least sixty (60) days written notice of the date upon which use, inspection and maintenance of the crossing structures, or any of them, by the Town of Gananoque, shall be discontinued.
- 2.2.7 The Town of Gananoque shall, as soon as practicable after the date specified in the notice under clause 2.2.6 above, but in any event prior to the expiration of the said sixty (60) days, remove the crossing structure including the support structures, and restore the site to a safe and stable condition, such determination to be made in the sole discretion of the Ministry. In addition, the Town of Gananoque shall take all steps to restore the natural environment that comprises the site or has been affected by the activities involved in the construction, use or removal of the crossing structure to the condition that existed immediately before the Town of Gananoque entered onto the site. All costs associated with the removal and site restoration shall be the responsibility of the Town of Gananoque.

2.3 Security

- 2.3.1 At the request of the Ministry, the Town of Gananoque shall provide security in the form of proof of liability insurance letter from Insurance Company in an amount acceptable to the Ministry.
- 2.3.2 The Ministry has the right to carry out inspections of any Work. If the Town of Gananoque fails to ensure that such Work complies with the Ministry's written approval, the Ministry may instruct the Town of Gananoque to discontinue the Work. The Ministry may then:
- (a) employ means it deems necessary to complete the Work or to remove the work, and the Town of Gananoque shall have no claim against the Ministry;

2.4 Compliance with Laws

The Town of Gananoque shall take all reasonable steps in the circumstances to ensure that all persons using the Trail do so in accordance with safe operating procedures, Ministry policies and the requirements of all laws, including, but not limited to, the provisions of the *Trespass To Property Act*, the *Occupiers Liability Act* and the *Lakes and Rivers Improvement Act*, as they may be amended from time to time.

2.5 Maintenance

- 2.5.1 The Town of Gananoque shall carry out all maintenance required to ensure the safe operation and use of the Trail, all facilities and crossing structures (e.g. bridges, signs,

etc.) including, without limitation, the removal of debris, materials obstructing stream flow and vegetation from the Trail, and the removal of garbage from the property.

2.5.2 The Town of Gananoque shall carry out all maintenance required to the Trail to the satisfaction of the Ministry and environmental regulatory agencies, in order to ensure stability of watercourse banks, prevent Trail erosion and sedimentation plus remove debris from water or land (e.g. culvert and bridge) crossings.

2.6 Costs

The Town of Gananoque acknowledges and agrees that it shall be responsible for any and all costs associated with its compliance with its obligations under this Agreement, including, without limitation, the design, construction, maintenance, operation, retirement and abandonment of the Trail.

2.7 Supervision

The Town of Gananoque shall supervise the use of the Trail as required to protect the public and adjacent property owners from vandalism and other criminal acts.

2.8 Adjacent Lands

The Town of Gananoque shall take all reasonable steps in the circumstances to ensure that all persons using the Trail remain within the limits of the maintained Trail and do not enter any adjacent lands of the Ministry or of adjacent property owners.

2.9 Permission of Adjacent Property Owners

Before this Agreement is executed by the Ministry:

- (a) the Town of Gananoque shall consult with adjacent property owners whose land the Trail passes through or by, or who may reasonably be affected by the use of the Trail, regarding the use, maintenance and construction of the Trail;
- (b) the Town of Gananoque shall provide evidence of permission from adjacent landowners over whose land the Trail passes through.

2.10 Signage

The Town of Gananoque shall consult with the Ministry regarding permits for the erection of signs or structures that are within the Ministry's area of control for highway rights-of-way, as set out in the *Public Transportation and Highway Improvement Act*, as it may be amended from time to time, and comply therewith.

2.11 Obligations

The Town of Gananoque shall ensure that the Trail Committee complies with the terms and conditions of this Agreement. It is recognized that the Trail Committee is a Committee of the Council of the Town of Gananoque, and as such the Trail Committee shall not enjoy any rights beyond those enjoyed by the Town of Gananoque under this Agreement.

3.0 LIABILITY, INDEMNITY AND RELEASE

3.1 Liability

The Ministry shall not be liable in any manner whatsoever for any loss, injury, or damage to person or property including loss of life, by whomsoever suffered, that in any way is connected to the existence, design, use, maintenance or construction of the Trail by any person unless caused by the negligence or the wilful act of any employee or agent of the Ministry while acting within the scope of his or her employment or agency respectively. This provision shall survive the termination or expiry of this Agreement.

3.2 Indemnity

3.2.1 The Town of Gananoque shall indemnify and save harmless the Ministry, its officers, employees and agents from and against any and all claims, demands, costs, losses, damages, suits or other proceedings arising from the existence, design, use, maintenance or construction of the Trail by any person including, without limitation, loss, damage or injury to person or property, including loss of life. This provision shall survive the termination or expiry of this Agreement.

3.2.2. The Town of Gananoque shall indemnify and save harmless the Ministry, its officers, employees and agents from and against any and all claims, demands, costs, losses, damages, suits or other proceedings arising from the Town of Gananoque's gating, signing, removal or abandonment of crossing structures, or any of them, including, without limitation, loss, damage or injury to person or property, including loss of life. This provision shall survive the termination or expiry of this Agreement.

3.3 Release

The Town of Gananoque agrees to forever discharge and release the Ministry and its employees, agents and servants from any claims or demands of any kind whatsoever, past, present and future, arising from or in connection with the granting of this Licence unless such claim or demand is caused by the negligence or the wilful act of any employee or agent of the Ministry while acting within the scope of his or her employment or agency respectively. This release is absolute and final and applies whether damages arise out of negligence or otherwise and whether they result in economic loss, injury or damage to property. This provision shall survive the termination of this Agreement.

4.0 INSURANCE

4.1 The Town of Gananoque shall obtain and keep in force a policy or policies of comprehensive general liability insurance for third party bodily injury, personal injury and property damage, which will respond to claims arising from or attributable to the existence, design, use, maintenance or construction of the Trail, including all facilities and crossing structures (e.g. bridges, signs, etc.).

4.2 The limits of insurance coverage shall be not less than \$5 Million per occurrence. A certificate of insurance coverage shall be submitted to the Ministry. The policy shall name the Ministry as an additional insured and contain a cross liability clause.

5.0 TERMINATION

5.1 Either the Ministry or the Town of Gananoque may terminate this Agreement for any reason whatsoever upon giving one hundred and eighty (180) calendar days written notice to the other parties of its intention to terminate this Agreement.

5.2 Default

5.2.1 The Ministry may provide notice in writing to the Town of Gananoque and the Trail Committee of any default of the Town of Gananoque's obligations under this Agreement and shall give the Town of Gananoque and/or the Trail Committee thirty (30) calendar days following receipt of such notice to remedy the default.

5.2.2 If the Town of Gananoque and/or the Trail Committee fails to remedy the default, in the opinion of the Ministry, within the thirty (30) days following receipt of notice from the Ministry, the Town of Gananoque and the Trail Committee shall be deemed to be in breach of this Agreement and the Ministry shall be entitled to treat this Agreement as terminated without further notice to the Town of Gananoque and/or the Trail Committee.

5.3 Should the Licence granted by this Agreement be terminated for any reason whatsoever, the Town of Gananoque acknowledges and agrees that it shall not be compensated for the loss of use of the Trail.

5.4 Retirement and Abandonment of Trail

5.4.1 Upon the termination of this Agreement, the Town of Gananoque shall retire and abandon the Trail at its sole cost and expense and, unless otherwise agreed to, restore the Ministry Lands, as closely as possible and to the satisfaction of the Ministry and regulatory agencies involved in the approval/permitting of the Trail initially, and to the condition they were in prior to the granting of this Agreement, including the removal of any permanent or temporary structures or physical improvements that the Town of Gananoque installed or erected.

5.4.2 Unless otherwise agreed in writing, a secure wooden gate, padlock and "Trail Closed" and "No Trespassing" signs shall be erected at each point the Trail intersects a boundary of the Ministry property and a key shall be delivered to the Ministry.

5.4.3 In addition, unless otherwise agreed in writing, at each bridge location or former bridge location, the Town of Gananoque shall erect a secure wooden gate and padlock, and "Trail Closed" and "No Trespassing" signs at each end of the bridge or former bridge location. A key shall be delivered to the Ministry.

5.4.4 All signs shall comply with the requirements of the *Trespass to Property Act*.

5.4.5 The obligations in this Section 5.4 shall survive the termination of this Agreement.

5.5 If the Town of Gananoque fails, neglects or refuses to retire and abandon the Trail to the satisfaction of the Ministry within sixty (60) calendar days of termination of this Agreement, or such other mutually agreed upon date, the Ministry may do so at the Town of Gananoque's expense. This obligation shall survive the termination of this Agreement.

6.0 **NOTICES**

6.1 Any notices required or permitted to be given for the purposes of this Agreement and any written communication intended for one of the parties to this Agreement shall be given in writing by personal delivery, sent by facsimile, or mailed by prepaid registered mail.

Subject to change by a party with written notice, notices shall be addressed as follows:

To the Ministry: (Land Management Supervisor)

To the Town of Gananoque:

- 6.2 Notices shall be deemed to have been effectively given on the date of personal delivery or the date of facsimile transmission, or in the case of service by registered mail, four (4) days after the date of mailing. In the event of a postal strike, notice shall be given by personal delivery or by facsimile transmission.

7.0 OWNERSHIP

- 7.1 The Town of Gananoque agrees that any permanent or temporary structures placed upon or physical improvements it has made to Ministry Lands shall remain the property of the Town of Gananoque unless the Ministry otherwise agrees in writing prior to any termination date that the said permanent structures or physical improvements may remain, in which case such structures or improvements shall become the property of the Ministry on termination of this Agreement.

8.0 STATUS AND AUTHORITY

- 8.1 The Town of Gananoque represents the Trail Committee and that it shall continue to be a member in good standing throughout the currency of this Agreement.

- 8.2 The Town of Gananoque represents and warrants that it has taken all necessary steps, done all acts, passed all by-laws and obtained all approvals necessary to give it the authority to enter into this Agreement.

9.0 WAIVER

- 9.1 No party shall be deemed to have waived the exercise of any right that it holds under this Agreement unless such waiver is made in writing. No waiver made with respect to any instance involving the exercise of any such right will be deemed to be a waiver with respect to any other instance involving the exercise of the right or with respect to any other such right.

10.0 ENTIRE AGREEMENT

- 10.1 This Agreement and the Schedules attached to this Agreement shall constitute the entire Agreement between the parties with respect to the subject matter of this Agreement and supersede all prior and contemporaneous Agreements, negotiations, proposals, representations, understandings or warranties of any kind, whether oral or written, between the parties with respect to the subject matter of this Agreement, and no oral or written representation that is not expressly contained in this Agreement is binding on the Ministry.

- 10.2 Neither this Agreement nor any provision under this Agreement is intended to confer upon any person other than the parties any rights or remedies.

11.0 APPLICABLE LAW

- 11.1 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in Ontario, and shall be treated in all respects as an Ontario contract.

12.0 TIME OF THE ESSENCE

- 12.1 Time shall be of the essence.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their representatives who are authorized to bind their respective organizations to the terms and conditions of this Agreement.

**HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF ONTARIO, REPRESENTED BY THE
MINISTER OF TRANSPORTATION FOR THE
PROVINCE OF ONTARIO**

Date

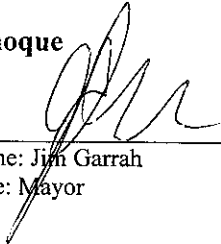
Oct 19/2010
Date

Per:

Name: Louis Tay
Title: Field Services Engineer

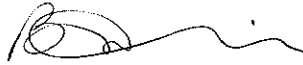
Town of Gananoque

Per:



Name: Jim Garrah
Title: Mayor

I have authority to bind the organization.



Clerk, Bonnie
Dingwall

SCHEDULE "A"
LEGAL DESCRIPTION

Schedule 'B1' Trail Sketch

THE CORPORATION OF THE TOWN OF
GANANOQUE
 TOWN OF Gananoque, Ontario
TRAIL UNDERPASS AT HWY 401 AND THE GANANOQUE RIVER
 Prepared by Heintzhaus Environmental Design for Gananoque Trail Committee
 Winter, 2008/9/10

Preliminary Trail Alignment and Types For Budget Estimate Purposes January, 2010

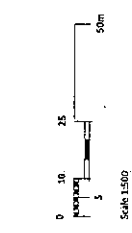
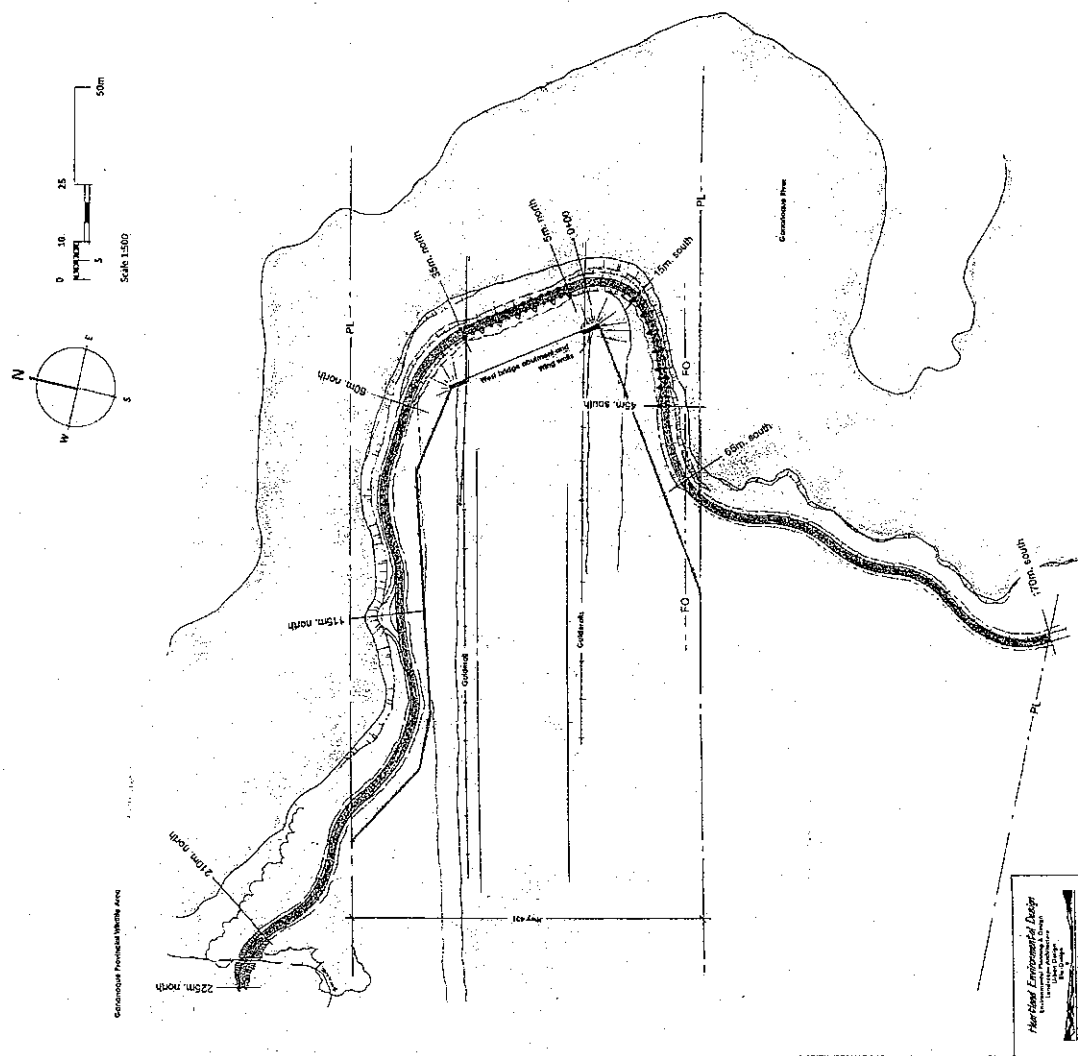
L1

- Legend**
- PL - Property line
 - - - FO - Fibre optic cable location
 - - - - FO - Beginning of 5m interval staking at south edge of bridge deck
 - On-grade trail construction (5 metre segments typical)
 - Cut/Fill trail construction (5 metre segments typical)
 - Construction of boardwalk (5 metre segments typical)
 - Construction of wide crossing

- Position of staking where trail type changes
- Proposed chain link security fence
- Existing gate rail

- Notes**
- Vegetation cover not shown for clarity
 - Exact location of trail types and transitions subject to additional survey information in the Spring of 2010
 - Final design to be reviewed by the Town of Gananoque Engineering Department
 - Trail construction continues southward from STM 170m south only with landowner approval
 - STM 220 construction continues northward from the bridge to the north with existing trail in Provincial Wildlife Area
 - All potential work within MTO right-of-way is subject to review and issue of Easement Permit

LEGAL DESCRIPTION



Heintzhaus Environmental Design
 Environmental Assessment & Design
 1000 Highway 10 West
 Unit 10
 Cambridge, Ontario N1R 5R8
 Phone: 519-885-1111
 Fax: 519-885-1112
 Website: www.heintzhaus.com