

Item 8.2.

Section I – Items for Board of Directors Action

TO: Chair and Members of the Executive Committee
Meeting #6/19, Friday, July 05, 2019

FROM: Michael Tolensky, Chief Financial and Operating Officer

RE: **ENCROACHMENT AGREEMENT WITH HEIDI FRANCIS FALCKH**
Toronto and Region Conservation Authority-Owned Lands Adjacent to 290
Nashville Road, City of Vaughan, Regional Municipality of York, Humber River
Watershed. CFN 54792

KEY ISSUE

Request to enter into an encroachment agreement with Heidi Francis Falckh as a means of resolving an encroachment for an armour stone retaining wall and wooden deck structure partially located on Toronto and Region Conservation Authority (TRCA) owned land adjacent to 290 Nashville Road, City of Vaughan, Regional Municipality of York, Humber River watershed.

RECOMMENDATION

THE EXECUTIVE COMMITTEE RECOMMENDS THAT Toronto and Region Conservation Authority (TRCA) enter into an encroachment agreement with Heidi Francis Falckh as a means of resolving an encroachment for an armour stone retaining wall and wood deck structure partially located on Toronto and Region Conservation Authority-owned land described as Part 1 on Plan 64R-4108 located adjacent to 290 Nashville Road, City of Vaughan, Regional Municipality of York, Humber River watershed.

THAT the encroachment agreement includes the key following terms and conditions:

- (i) that the use of the land for the encroaching structure be for the nominal sum of \$2.00;
- (ii) at any time TRCA has the option to request removal of the retaining wall and deck structure and upon request, the owner agrees to do so within 180 days at their sole cost;
- (iii) that the retaining wall and deck structure is to be maintained by the owner at its sole cost, used in the same manner as present and is not to be enlarged or altered;
- (iv) that the owner accepts the lands at their risk and shall at all times indemnify, save harmless and defend TRCA from any claims arising out of the encroachment;
- (v) that the owner will maintain public liability and property damage insurance in an amount of \$5,000,000 naming TRCA as an additional insured, throughout the duration of the agreement;
- (vi) the owner is responsible for all costs associated with the preparation and registration of the encroachment agreement including TRCA's legal costs.

THAT any other terms and conditions of the agreement be satisfactory to TRCA staff and solicitor;

AND FURTHER THAT authorized officials be directed to take the necessary action to implement the agreement including obtaining any approvals and the signing and execution of documents.

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BACKGROUND

In 2015 an encroachment comprising armour stone retaining walls, a wooden deck structure and safety rail came to the attention of TRCA staff. In September 2015, TRCA staff met with the owner and the owner's spouse and representative, to view the encroachments. The area of concern comprises a number of closely located tiered armour stone retaining walls and a triangular portion of a deck situated on the western boundary that encroaches approximately five metres onto TRCA owned land. These walls retain a significant amount of fill materials, which are placed at a very steep angle. A section of the lower armour stone retaining wall has encroached onto TRCA owned land.

Based upon geotechnical staff review, the removal of the encroaching portion of the lower retaining wall is not feasible due to the steep slope and significant amount of fill being retained. Removal of the encroaching wall could initiate further movement of the fill materials behind the wall. As the upper retaining walls are connected to the lower retaining walls, it is anticipated that the upper walls would also be vulnerable to failure if there was movement of the existing fill materials caused by removal of the lower wall. It is recommended that the encroaching portion of the wall not be removed to mitigate any further adverse effects to the slope.

Accordingly, the owner has requested that TRCA enter into an agreement as a way of resolving that portion of the encroaching retaining wall and associated deck structure.

The subject TRCA-owned lands were acquired from Humber Estates Co. Ltd., on 22 October 1974 under the Humber River Flood Plain Lands project.

Attachment 1 is a sketch illustrating the location of the subject lands and the location of the encroachment. Attachment 2 is an orthophoto illustrating the location of the subject lands and the location of the encroachment.

RATIONALE

An encroachment agreement will appropriately transfer the risk and liability of the encroaching structures to the owner and regulate its ongoing use, while ensuring that the structure can remain in place and mitigate any adverse effects to the slope.

Relationship to Building the Living City, the TRCA 2013-2022 Strategic Plan

This report supports the following strategy set forth in the TRCA 2013-2022 Strategic Plan:

Strategy 4 – Create complete communities that integrate nature and the built environment

FINANCIAL DETAILS

The owner is responsible for all costs of the preparation and registration of the encroachment agreement.

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Date: June 18, 2019

Attachments: 2

Attachment 1: Site Plan

Attachment 2: Orthophoto