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TIME-SENSITIVE COMMUNICATION

October 6, 2022

Stephen Burt, Manager
Hamilton District Office
Ministry of the Environment, Conservation & Parks
119 King Street West, 9th Floor
Hamilton, ON L8P 4Y7

**Re: Director's Order #1-PE3L3 - Chedoke Creek Workplan
Request for MECP Intervention**

Dear Stephen,

This letter is a follow-up to the City's most recent Chedoke Progress Report submitted to your office on September 30, 2022, and the subsequent monthly meeting held on October 4, 2022.

The City has kept the MECP informed of the challenges that have been experienced since August 18, 2022, resulting directly from the daily attendance and interference by members of the Haudenosaunee Development Institute (HDI) at the work site.

Challenges with Undertaking Work

On August 18, 2022, preparatory work at the site was paused after two individuals representing the HDI blocked access to the site with a vehicle via the Kay Drage Park Bridge and claimed that they were exercising their treaty rights. The HDI representatives indicated that they, and an undisclosed number of others, would continue to come to the work site and would not permit the work to proceed until certain conditions had been met and until HDI's consent for the project had been applied for and received. Work on the project had to be paused while internal City discussions took place regarding the demands from the HDI and the City's ability to meet those demands.

Preparatory work at the site resumed on August 22, 2022, and on August 23, 2022, the City reached a verbal agreement with the HDI that would involve the City's contractor entering into an agreement with the HDI to engage the HDI for environmental monitoring. However, later that day, representatives from the HDI again attended at the site and stopped work from proceeding. The City was informed by a different HDI representative that attended at the site that the agreement for environmental monitoring could only be directly between the HDI and the City. As a result, on August 23, 2022, work on the site was again paused, while City staff worked to determine next steps.

The City continued discussions with the HDI regarding their concerns and determined that City staff needed authority from City Council to directly negotiate and enter into agreements with the HDI to retain individuals from the HDI to participate in the work. It was also determined that an Operational Safety Plan needed to be developed prior to resuming the project, given the safety concerns arising from the attendance on-site of parties other than the contractor.

Inability of City to Secure Cooperation from HDI

On September 7, 2022, City staff presented report PW19008(r) to the City's General Issues Committee (Committee) with recommendations related to the project. Representatives from the HDI elected to delegate to Committee during that same meeting. The Committee members voted to support the staff recommendations, which were ratified at the September 14, 2022 City Council meeting. The General Manager, Public Works was authorized to enter into agreements for Indigenous Environmental Monitors to support the Chedoke Creek Remediation Project in a form satisfactory to the City of Hamilton Solicitor, and without exceeding the existing approved project budget.

Work on the project resumed on September 21, 2022 with a revised site health and safety (H&S) plan implemented by the City's contractor. This H&S plan included recommendations from the City's Operational Safety Plan including scripting to be used if HDI representatives or other interested parties attempted to access the site. Provisions were included to allow these parties on-site as escorted visitors provided that they wear appropriate PPE (provided by the contractor), participated in a H&S orientation, and followed all required H&S related instructions. At the same time, City staff continued to work towards establishing agreements with the Indigenous Nations for Environmental Monitors to participate in the project.

In an effort to be inclusive with its indigenous community, the City's consultant was instructed to reach out to the Mississaugas of the Credit First Nation (MCFN), the Huron-Wendat Nation (HWN), and the Six Nations of the Grand River (SNGR) regarding their interest in agreements for Environmental Monitors to participate in the project. The MCFN were interested and forwarded the City a template agreement for consideration and the City has submitted a revised agreement to the MCFN for review. The HWN and SNGR have both indicated interest, but they do not have template agreements available and it is expected that the template agreement that is being worked on with the MCFN will be used to support discussions with the HWN and the SNGR.

Unfortunately, there has been no progress with the HDI regarding any agreement, and HDI representatives continue to interfere with the Chedoke Creek site works. The HDI representatives refuse to follow the process put in place by the City's contractor to have them safely attend the site, they continue to access areas that are under active construction while claiming to exercise their treaty rights, they piloted a watercraft within the creek disrupting work to prepare the dredgate pipeline, and most recently, they removed part of the security fencing that encloses the contractor's laydown area to build an encampment within the delineated construction area and blocked the contractor's access to the dredging machine (including erecting a tent, building a bonfire, and parking various vehicles within the delineated construction area).

Continued and Escalating Interference

The City's contractor has repeatedly asked the HDI representatives to follow the established processes to have them safely attend the site, but they continue to refuse. They have been advised repeatedly that they are putting themselves at risk, and that work cannot proceed due to concerns for their safety. They have been asked repeatedly to leave the active construction area to exercise their treaty rights from a safe location, and they continue to refuse. The Hamilton Police Service has been engaged and have had similar conversations with the HDI representatives, including advising them that their actions may cross the lines of criminal behaviour, but they continue to obstruct the work. More recently, there have been escalations of the behaviour by the HDI representatives, aimed at intimidating the City's contractor and their subcontractors and the City was advised by the contractor that, at some point between the evening of October 3, 2022, and the morning of October 4, 2022, someone broke into the dredging barge and stole various tools and equipment, but they were not able to identify those responsible.

The City has made every reasonable effort to respond to changing demands from the HDI. Initially, they wanted an agreement in place for Environmental Monitors, and the City quickly established a process

to make that happen. The HDI then required that consent be sought from the HDI for the project, that the agreement for environmental monitoring be directly with the City and that, further, consent be required from the HDI for every project that occurs within municipal boundaries (with various fees paid and capacity funding provided to the HDI). After these demands were rejected by the City, HDI demanded compensation in the amount of \$40,000 in unspecified legal fees, and also demanded unspecified capacity funding to support the review of various project documents and compensate HDI Environmental Monitors. When this was rejected, a new list of demands was submitted (which included many of the previous requests), but now amounting to \$350,000.

The City has also engaged in discussions with the Hamilton Police regarding this matter and received a communication from them this morning, indicating as follows:

"One of the most challenging aspects of this file is understanding who is complaining about the actions of the protestors on scene and who has rights to the property in question. What we know is that the Royal Botanical Gardens owns the property occupied by the protestors and to date we have no complaint from them seeking to have the protestors removed. We have attempted to reach the CEO and have yet to receive a response. It is my understanding that you have also tried to connect with their CEO with negative results.

We also know that the City of Hamilton has contracted work out to Milestone to complete the dredging. The dredging is work the City of Hamilton is being ordered to complete by the Ministry and this work is being negatively impacted by the actions of the protestors. The protestors action make it impossible and unsafe for the contractors to carry out their duties and adhere to workplace safety legislation. Lastly and effective today, that a subcontractor of Milestones is now refusing work at the location, "Until they can be granted safe and unimpeded access to the project zone".

As a result of all of the above, it is the position of Hamilton Police Service that the City of Hamilton seek a court imposed emergency injunction to remove the protestors and any future protestors from the property to allow the City to continue with this important work.

The City has given thought to the position of Hamilton Police and believe that an emergency injunction is a remedy of last resort that would create significant challenges from several perspectives including impacting our relationships with our local indigenous communities. We believe that there is a more appropriate and expeditious mechanism (outlined below) to provide an instrument with legal force and effect to the Hamilton Police and that they could rely on to facilitate our contractor's access to the work site to complete the work required under the Director's Order.

Contractor has Now Refused to Continue Work

The City, our contractor, and our consultant have been responding regularly, if not daily, to new complications, changing demands from the HDI, and the requirement to review and respond to various communications. All of this has resulted in significant delays to the Chedoke Creek Workplan and an estimated \$466,000 (as of October 3rd) in additional costs to the community, which costs continue to increase by \$10,000-\$15,000 on a daily basis, while the project is paused and the City's contractor remains on standby.

Yesterday, the City received a letter from the contractor, stating that:

"... the situation has now proven to be unmanageable and unsafe. The City cannot reasonably expect Milestone to police the jobsite in the manner necessary to prevent HDI members from accessing the site when they are intent on doing so. Milestone also cannot be responsible to forcibly remove individuals from the jobsite. Interacting with these individuals in that way has the potential to become unsafe. The drawn-out nature of the situation has created psychologically unsafe work conditions. This is a further concern for Milestone.

Also, members of HDI are being exposed to unsafe conditions as a result of their entry onto the Project site without permission and without proper safety precautions. One recent example is a member of HDI tying up a boat to the dredge pipeline. This is not only unsafe but is hindering the installation of the pipeline and could result in serious damage to the critically important equipment for the project, which is on the critical path of the Project's schedule. This is only one example of recent interactions with HDI members."

The contractor included a letter from a key subcontractor refusing to continue to work due to "dangerous and intimidating behaviour" from HDI representatives and concerns for safety and concluded by advising the City that it would be demobilizing from the work site until uninterrupted and unimpeded access to the work site is available, at which time the contractor would provide a revised schedule for completion of the work, along with an accounting of the additional costs and expenses incurred by Milestone and its subcontractors.

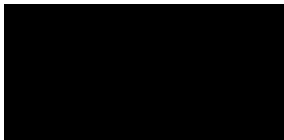
Request for Intervention by MECP

It is clear that, despite all of the efforts and costs expended by the City, the City cannot proceed with the work under the Director's Order, and will be unable to achieve the MECP deadline of December 31, 2022 for all in-water works.

The City is therefore formally requesting that the MECP exercise its authority under its legislation to assist and enable the City to complete the work required under the Director's Order as follows:

1. Immediately issue an order to the HDI under Subsection 196(2) of the *Environmental Protection Act* and Subsection 104(3) of the *Ontario Water Resources Act*, requiring that they permit the City to have access to the work area. While the HDI is asserting treaty rights over the area in question, there is no doubt that HDI has been occupying the area and taken charge and control over the area and is interfering with access, so much so that our contractors and subcontractors have now refused to continue with the work. These provisions of the legislation were intended to be used precisely in a situation such as this one, where the MECP has ordered one party to complete work but that party is unable to do so without the cooperation of another party that is refusing access. Unless and until the MECP issues such an order, there is no reasonable and timely means by which the City can continue with and complete the work; and
2. Immediately extend the deadlines in the Director's Order to, at a minimum, December 31, 2023. Given the delays in commencement of the work, uncertainty regarding when work can continue, restrictions on times during the year when work can be done (including complications with timelines for associated permits from various agencies, and potentially with fish spawning periods during which no in-water works are permitted) and other logistical considerations, it is clear that the deadlines prescribed in the Director's Order are unachievable.

Sincerely,



Nick Winters
Director - Hamilton Water
City of Hamilton

Copy to: Lubna Hussain – Director, West Central Region, MECP
Elizabeth Chee Sing – Water Compliance Supervisor, West Central Region, MECP
Sarah Day – Issues Project Coordinator, Hamilton District Office, MECP
Shelley Yeudall – Wastewater Inspector, Hamilton District Office, MECP
Cari Vanderperk – Director, Watershed Management, Hamilton Water

Mark Bainbridge – Director, Planning & Capital, Hamilton Water
John Helka – Director, Woodward Upgrades Program, Hamilton Water
Shane McCauley – Acting Director, Water & Wastewater Operations, Hamilton Water
Tim Crowley – Project Manager, Watershed Management, Hamilton Water
Ron Scheckenberger – Principal Water Resources, Wood Environment & Infrastructure Solutions
Susan Girt – Manager, Compliance & Regulations, Hamilton Water
Wendy Jackson – Senior Regulatory Coordinator, Hamilton Water
Lee Veritis – Project Manager, Compliance Support Group, Hamilton Water
BCOS

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November 15, 2022

Nick Winters
Director
Hamilton Water
100 King Street West, 9th Floor
Hamilton, Ontario, L8P 1A2
Nick.Winters@hamilton.ca

Dear Nick,

I have received your correspondence dated October 6, 2022 outlining the challenges and delays that the City of Hamilton and its contractors have experienced undertaking the in-water dredging work in Chedoke Creek required by Directors Order #1-PE3L3.

As outlined in our September 2, 2022 letter, the City of Hamilton is responsible for completing the remediation activities in Chedoke Creek and is the best positioned to discuss concerns regarding the remediation, its potential impacts on the natural environment and share project status documentation with Haudenosaunee Development Institute (HDI).

Given the complexity of the required work and restrictions as to when the work may take place in Chedoke Creek, I am prepared to consider an extension to the compliance dates in the Director's Order. Before making a decision, I require a meeting be held with the City to discuss the acceptable parameters of such an extension to ensure the required work is completed as expeditiously as possible to mitigate the water quality impacts as a result of the sewage spill.

In terms of the City's request to consider issuing an access order under s. 196(2) of the *Environmental Protection Act* and the corresponding provision in ss.104(3) of the *Ontario Water Resources Act*, the ministry's view is that such an order is not appropriate in the circumstances.

Please contact me at stephen.burt@ontario.ca or 905-541-4533 to co-ordinate further conversations pertaining to any extension of compliance dates specified in the Director's Order.

Sincerely,



Stephen Burt
District Manager

Cc:

Lubna Hussain – Director, West Central Region, MECP
Elizabeth Chee Sing – Water Compliance Supervisor, West Central Region, MECP
Sarah Day – Issues Project Coordinator, Hamilton District Office, MECP
Shelley Yeudall – Wastewater Inspector, Hamilton District Office, MECP
Cari Vanderperk – Director, Watershed Management, Hamilton Water
Mark Bainbridge – Director, Planning & Capital, Hamilton Water
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December 20, 2022

Cari Vanderperk
Director, Watershed Management
Hamilton Water
Public Works, City of Hamilton
E-Mail: Cari.Vanderperk@hamilton.ca

Dear Cari Vanderperk:

Re: Extension Request of Item No.6 of Director's Order No.1-PE3L3

I am in receipt of your letter dated October 6, 2022, and subsequent correspondence dated December 9, 2022, in which the city is requesting an extension of the compliance date specified in Item No. 6 of the Director's Order from December 31, 2022 to December 31, 2023.

I have reviewed your request and supplementary correspondence from your consultant WSP, 'Chedoke Creek - Targeted Dredge, Completion Scenarios, December 9, 2022'. Based on my review of the file history and documents provided to support the city's request, I understand there are many complexities, challenges, and delays that the City of Hamilton and its contractors have experienced undertaking the in-water dredging work in Chedoke Creek pursuant to the Chedoke Creek Workplan.

Given the complexities of the required work, required work permit extensions and to ensure there is appropriate time provided to facilitate ongoing discussions with Indigenous communities that have interest in the Chedoke Creek Workplan, I agree that an extension is required.

Having considered your submissions and further to our discussions held on November 23rd and December 6th, 2022, I am of the view that the compliance date can be extended.

As such, pursuant to my authority under sections 157.3 of the *Environmental Protection Act*, s.16.4 of the *Ontario Water Resources Act*, and sections 49 and 54 of the *Legislation Act, 2006*, I hereby alter the compliance date in Item No. 6 as requested so that Item No. 6 now reads as follows:

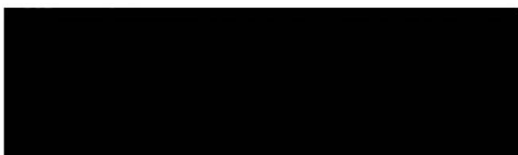
6. By December 31, 2023, complete the approved Chedoke Creek Workplan.

All other Items in the order remain in effect, and unaltered. This order alters and constitutes part of Director's Order No. 1-PE3L3, issued on December 4, 2020. You may require a hearing before the Ontario Land Tribunal in respect of this amendment to the compliance date in accordance with the *Environmental Protection Act* and the *Ontario Water Resources Act*. If you require a hearing, you have 15 days after the service of this letter to serve notice upon the OLT and the Director.

I encourage you to inform the various stakeholders who are interested in the work that is to be completed pursuant to my order, of this amendment.

If you have any questions concerning this amendment to Director's Order No. 1-PE3L3, please do not hesitate to contact me.

Regards,



Stephen Burt
District Manager & Director appointed for the purposes of s.157.3 EPA, s.16.4 OWRA.

Cc. Lubna Hussain, Director, West Central Region, MECP
Elizabeth Chee Sing, Supervisor, MECP
Nick Winters, Director, Hamilton Water
Susan Girt, Compliance & Regulations Manager, Hamilton Water

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December 29, 2022

Haudenosaunee Confederacy Chiefs Council
c/o Haudenosaunee Development Institute

[REDACTED]
[REDACTED]
[REDACTED]

Re: Chedoke Creek and Cootes Paradise Remediation Project

Dear Aaron Detlor,

I reviewed correspondence dated November 1, 2022, from Mr. Tim Gilbert of Gilbert's LLP who I understand is acting as counsel to the Haudenosaunee Development Institute (HDI). I am also in receipt of your email correspondence dated November 1, 2022, asking that I respond to you directly.

I would like to thank you for sharing your concerns and outlining HDI's position on the City of Hamilton's October 6, 2022 correspondence and request for an access order under the *Environmental Protection Act* (EPA), and the *Ontario Water Resources Act* (OWRA), and to extend timelines set out in Director's Order #1-PE3L3.

Ontario's Approach to Consultation in Nanfan Deed Area

The Crown has acknowledged, based on court decisions about the Nanfan Deed, that consultation is required with respect to appreciable adverse impacts on hunting, fishing or harvesting. As the Crown has expressed to the Haudenosaunee Confederacy Chiefs Council (HCCC)/HDI in the past, the Crown does not consider there to be a credible claim to title or exclusive use and occupation under the Nanfan Deed. Consent of the HCCC/HDI is not required in advance of a Director, appointed under the EPA and OWRA, issuing an order under their legislative authority.

Appreciable Adverse Impact on Hunting, Fishing or Harvesting

The November 1, 2022 correspondence from yourself and Mr. Gilbert on behalf of HDI states that the Haudenosaunee Confederacy Chiefs Council (HCCC) and HDI have

repeatedly informed both the City of Hamilton and the ministry that Haudenosaunee rights and interests have been, and continue to be, negatively impacted by the spill and proposed remediation works.

Chedoke Creek in its current state is significantly degraded. It is our understanding that for several years Hamilton Public Health Services has recommended against using the urban watercourses linked to Chedoke Creek for fishing. As well, we are not aware of Haudenosaunee who are hunting or fishing in or near Chedoke Creek.

The remediation work is meant to improve the watercourse and ultimately the Cootes Paradise watershed. I am satisfied that, under the conditions set out in the order and other applicable permits or authorizations (e.g., Species at Risk authorization), that the workplan prepared by the City of Hamilton will protect fish and aquatic habitat while the remediation work is completed. Any effects from the remedial work would be temporary in nature and occur during the actual dredging and would be minimal taking into consideration the protective measures that will be in place.

Based on the current state of the environment of Chedoke Creek and Cootes Paradise/Western Hamilton Harbour area and surrounding environment, and the nature of the remediation work together with the protective measures governing the work, the ministry does not expect any appreciable impacts on hunting, fishing or harvesting as a result of the remediation work. Therefore, our preliminary assessment is that the duty to consult is not triggered by the proposed remediation work.

Ongoing Impacts to Chedoke Creek and Cootes Paradise Watershed

Given the nature of the sewage spill, and the proposed remediation activities required by the Order, it is critical that the remediation work gets underway as quickly as possible. It is the ministry's view that if the sewage in Chedoke Creek and the Cootes Paradise/Western Hamilton Harbour area is not addressed, the effects will persist and contribute to:

- potential increased algae growth and its detrimental impact on fish and other wildlife habitat; and
- additional nutrient loading which risks setting back of years of work to improve the natural conditions in Cootes Paradise to meet Hamilton Harbour Remediation Action Plan (RAP) goals; and
- prolonged impairment to aquatic life from sediment impacted by nutrients, polycyclic aromatic hydrocarbons and metals, counter acting other water quality improvements made to the ongoing sources to Chedoke Creek, and
- reduced opportunity for enjoyment and recreation in Cootes Paradise due to potential increase in algal blooms and toxins.

Consultation Efforts

In your correspondence it states that the City of Hamilton and the ministry have failed to discharge their duties to the Haudenosaunee in respect of both the spill and the proposed remediation works.

Although the ministry's preliminary assessment is that the duty to consult was not triggered by the proposed remediation work, nevertheless the HCCC/HDI was notified and consulted by the City of Hamilton about the proposed work.

It is my understanding that the City of Hamilton contacted the HCCC/HDI on February 12, 2021, to identify the City's interest in engaging with the HCCC/HDI about the remediation. Further a virtual meeting to discuss the project details was held on February 25, 2021, and all consultant and technical reports for the targeted dredge work were provided to the HDI on March 12, 2021.

Further I understand that there have been meetings and discussions between the City of Hamilton and HDI since August 2022 where ongoing discussions regarding the development of environmental monitoring agreements have been unsuccessful.


Next Steps

If the HDI believes that the remediation work would have an appreciable impact on hunting, fishing or harvesting, we would ask that the HDI provide the ministry with details regarding its concerns in this regard for its consideration.

The ministry has now extended the deadline for the cleanup order issued to the City of Hamilton to remediate Chedoke Creek by one year. The new deadline is now December 31, 2023. I would encourage HCCC/HDI to participate in consultation with the City of Hamilton. In keeping with the spirit of reconciliation and the principles of mutual respect, my team and I would be happy to organize a meeting with HCCC/HDI to discuss concerns you want to raise regarding impacts of the remediation work on hunting, fishing, or harvesting.

Please contact me at stephen.burt@ontario.ca or 905-541-4533 to co-ordinate further conversations as needed.

Sincerely,



Stephen Burt
Hamilton District Manager
Ministry of the Environment, Conservation and Parks

Cc(via email):

Tim Gilbert, Gilbert's LLP
Larry Tansely, Counsel, City of Hamilton
Lubna Hussain, Director, West Central Region
David Milakovic, Counsel, West Central Region
Elizabeth Chee Sing, Supervisor, Water Compliance



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Email: Carlyte.Khan@hamilton.ca

January 23, 2023

Sent by email to:
[REDACTED]

To: Aaron Detlor
Haudenosaunee Confederacy Chiefs Council
c/o Haudenosaunee Development Institute
[REDACTED]
[REDACTED]
[REDACTED]

Subject: Chedoke Creek Remediation

We write to you further to the correspondence dated December 29, 2022, sent to you by the Ministry of the Environment, Conservation and Parks ("MECP").

In its letter, the MECP makes it clear that consultation is required by the Crown in respect of matters having appreciable adverse impacts on hunting, fishing or harvesting and that the Crown has previously expressed to Haudenosaunee Development Institute ("HDI") that the Crown "does not consider there to be a credible claim to title or exclusive use and occupation", and that there was no requirement for consent from the HDI prior to issuing the Director's Order to the City of Hamilton ("City") requiring remediation of Chedoke Creek. Notwithstanding the MECP's position, HDI representatives have physically occupied and exercised control over the work site for the remedial work.

On April 26, 2021, the HDI advised the City that it must cease and desist all work related to the targeted dredging of Chedoke Creek until HDI consent was received for the remedial work. There were subsequent conversations between senior City staff and HDI over many months, but without success or conclusion. In August 2022, when the construction work began, HDI representatives attended at the location of the work and impeded access and created unsafe working conditions resulting in the contractor stopping work and contacting the Police and the City. Unfortunately, the City has incurred significant costs as a result of this interruption by the HDI, all at the cost of the public, as well as depriving the community of the benefits from the proposed improvements to the Chedoke Creek watershed.

During the initial work stoppage, HDI advised the City that they required a representative to be present for the remedial work and for monitoring purposes, and work was paused while discussions ensued for this purpose. Unfortunately, those discussions have not been productive because the HDI has insisted on (i) an application by the City for consent of the HDI to proceed with the remedial work in Chedoke Creek

Subject: Chedoke Creek Remediation

Page 2 of 2

and (ii) a commitment to seek consent for all projects/work undertaken by the City. Indeed, the letter from Mr. Gilbert dated September 22, 2022 confirms the position of the HDI that "more than mere consultation is required. What is required is free and informed consent".

Prior to undertaking the remedial work and irrespective of any formal requirement to consult, the City had engaged with the Mississaugas of the Credit First Nation, the Huron-Wendat Nation, the Six Nations of the Grand River and HDI. The City, as directed by City Council, also offered to enter into agreements with any of the above noted First Nations Communities, if desired, for Environmental Monitors to attend the work site during the course of the remedial work. Only the HDI has insisted that the City satisfy additional conditions, including conditions that go beyond the scope of this project, in order for the remedial work to proceed.

The MECP has, in its recent correspondence, extended the deadlines for the City to complete the remedial work in Chedoke Creek due to the interruption and delay in the City's work by the HDI. However, the City, as a matter of law, must proceed with the remedial work required by the Director's Order.

The City remains interested and willing to engage in further consultation with the HCCC/HDI and to enter into an agreement for an Environmental Monitor with the HCCC/HDI on similar terms as with other First Nations Communities. Please advise the City if the HCCC/HDI is interested in doing so by no later than two (2) weeks from the date of this letter. If the City does not receive a response or receives one that continues to insist on acknowledgements, confirmations, and consent from the HDI, we will have no option but to presume that the HDI is not interested in consultation regarding the proposed work or in providing an Environmental Monitor.

Yours truly,



Carlyle Khan
General Manager, Public Works
Public Works Department
City of Hamilton

CK/re



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Hamilton

February 16, 2023

Email: [REDACTED]

Aaron Detlor
Haudenosaunee Confederacy Chiefs Council
c/o Haudenosaunee Development Institute

[REDACTED]
[REDACTED]

Subject: Chedoke Creek Remediation

Dear Mr. Detlor,

Further to our correspondence dated January 23, 2023, in which the City of Hamilton again extended the offer for further consultation with the HCCC/HDI and expressed its willingness to enter into an agreement for an Environmental Monitor on similar terms as those with other First Nations Communities. We asked for a response within two weeks but have not heard from the HDI.

The purpose of this letter is to provide notice that the City has now rescheduled commencement of the remedial work at Chedoke Creek for June 2023. As you know, this work is required by law pursuant to a Director's Order issued by the Ministry of the Environment, Conservation and Parks ("MECP"). The work initially had a deadline of December 31, 2022, but was extended by the MECP when the City's contractor was unable to complete the work last summer due to access being impeded and the creation of unsafe work conditions by HDI representatives, which resulted in the contractor stopping work and contacting the Police and the City for assistance and eventually demobilizing from site.

As you know from our previous correspondence, the City incurred significant costs as a result of the interruption of its remedial work by the HDI last summer. There is a limited and optimal window of opportunity to conduct this work and the City will be taking whatever measures are required to ensure that this work can proceed, as planned, and safely without risk to any contractors or other third parties.

Staff will be providing an update on this issue to General Issues Committee on March 22, 2023. A copy of the report will be posted on the City's website approximately one week prior to the committee meeting.

Yours truly,

[REDACTED]

Carlyle Khan
General Manager, Public Works
Public Works Department
City of Hamilton



Hamilton

City of Hamilton
Public Works Department | Hamilton Water Division
Hamilton Water Director's Office
100 King Street West, 9th Floor
Hamilton, ON L8P 1A2
Phone: 905.546.2424, ext. 1474
E mail: Nick.Winters@hamilton.ca

TIME-SENSITIVE COMMUNICATION

February 23, 2023

Ministry of the Environment, Conservation and Parks
Drinking Water and Environmental Compliance Division
West Central Region
119 King Street West, 9th Floor
Hamilton, Ontario L8P 4Y7

Attention - Stephen Burt, Hamilton District Manager

Dear Stephen,

Re: Director's Order #1-PE3L3 - Chedoke Creek Workplan

I write to you further to your correspondence dated December 29, 2022, sent by you to the Haudenosaunee Confederacy Chiefs Council in care of the Haudenosaunee Development Institute ("HDI"), and our subsequent letters to the HDI, seeking further consultation and to enter into an Environmental Monitoring Agreement with the HDI, to which we have received no response.

Background

On February 25, 2021, the HDI advised the City that it must cease and desist all work related to the targeted dredging of Chedoke Creek until HDI consent was received for the remedial work. There were subsequent conversations between senior City staff and HDI over many months, but without success or conclusion.

On August 18, 2022, preparatory work at the site was paused after two individuals representing the HDI blocked access to the site with a vehicle via the Kay Drage Park Bridge and claimed that they were exercising their treaty rights to attend the site. The HDI representatives indicated that they and an undisclosed number of others would continue to come to the work site and would not permit the work to proceed until certain conditions had been met and until their consent for the project had been applied for and received. Work on the project had to be paused while internal City discussions took place regarding the demands from the HDI and the City's ability to meet those demands.

Preparatory work on the site resumed on August 22, 2022. On August 23, 2022, the City reached a verbal agreement with the HDI that would involve the City's contractor entering into an agreement with the HDI to engage the HDI for environmental monitoring during the work. However, later that same day, representatives from the HDI again attended the site and stopped work from proceeding. The City was informed by a different HDI representative that attended the site that the agreement for environmental monitoring could only be between the HDI and the City. As a result, on August 23, 2022, work on the site was again paused, while City staff worked to determine next steps.

Ministry of the Environment, Conservation and Parks
Page Two

Work on the project resumed on September 21, 2022, with a revised site health and safety plan implemented by the City's contractor. This plan included recommendations from the City's Operational Safety Plan including scripting to be used if HDI representatives or other interested parties attempted to access the site. Provisions were included to allow these parties on-site as escorted visitors provided that they wear appropriate PPE (provided by the contractor), participated in a safety orientation, and followed all required safety related instructions. At the same time, City staff continued to work towards establishing agreements with the HDI for Environmental Monitors to participate in the project.

Unfortunately, there was no progress with the HDI regarding any agreement, and HDI representatives continued to interfere with the Chedoke Creek site works. The HDI representatives refused to follow the process put in place by the City's contractor to have them safely attend the site, they continued to access areas that were under active construction while claiming to exercise their treaty rights, they piloted a watercraft within the creek disrupting work to prepare the dredgate pipeline and they blocked the contractor's access to the dredging machine (including erecting a tent, building a bonfire, and parking various vehicles within the delineated construction area).

The Hamilton Police Service was engaged and had conversations with the HDI representatives, including advising them that their actions may cross the lines of criminal behaviour, but they continued to obstruct the work. There was escalation of the behaviour by the HDI representatives aimed at intimidating the City's contractor and their subcontractors and the City was advised by the contractor that, at some point between the evening of October 3, 2022, and the morning of October 4, 2022, someone broke into the dredging barge and stole various tools and equipment, but they were not able to identify those responsible.

Inability to Complete Remedial Work

As a result of the exercise of physical control and occupation over the area, including impeded access, threats to physical safety and the creation of unsafe working conditions (including psychologically unsafe work conditions) by HDI, the contractor was unable to proceed with its work. Eventually the contractor refused to carry out the work and demobilized from the site, stating that they would not return until free and unimpeded access to the work site is available, at which time the contractor would provide a revised schedule for completion of the work, along with an accounting of the additional costs and expenses incurred by it and its subcontractors. To date, the City has incurred significant financial losses under its contract amounting to well over \$1 Million.

As a result of the interruption and delay caused by the HDI, and the City being unable to complete the remedial work, on October 6, 2022, the City requested that the Ministry extend the timelines for the remedial work to be completed. The City gratefully received correspondence from the Ministry dated December 20, 2022, agreeing to extend the timelines to December 31, 2023, as requested.

The City has now rescheduled commencement of the remedial work at Chedoke Creek to commence in June 2023. However, it is clear that despite all of the efforts and costs expended by the City, we cannot proceed with the work required by the MECP under the Director's Order until the City's contractor can be assured of free and unimpeded access. Given the previous interference by the HDI, their lack of response to the Ministry and the City's letters, and the recent publicly released details regarding their interference with a Metrolinx project at Moss Park in Toronto, the City has every expectation that this interference will continue.

Ministry of the Environment, Conservation and Parks
Page Three

The City is reiterating its request that the Ministry exercise its authority under subsection 196(2) of the *Environmental Protection Act* and/or subsection 104(3) of the *Ontario Water Resources Act* to issue an order to enable the City to complete the work by compelling the HDI to permit and give access to the work area. Timing is critical, and City requires the order to be issued to ensure that the remedial work at Chedoke Creek can proceed in June 2023 as planned. As a result, we are requesting that the Ministry provide written assurance to the City on or before March 10th, 2023, that the order will be issued. Failing that, the City will have no other option but to bring an application to the Court, naming the Ministry as a respondent, and seeking relief from the Court.

The City remains open to further discussion and collective efforts in meeting the requirements of the Director's Order and completing the Chedoke Creek Workplan.

Sincerely,



Nick Winters
Director - Hamilton Water
City of Hamilton

Copy to: Lubna Hussain – Director, West Central Region, MECP
Elizabeth Chee Sing – Water Compliance Supervisor, West Central Region, MECP
Scotty McCaw – Issues Project Coordinator, Hamilton District Office, MECP
Carlyle Khan – General Manager, Public Works, City of Hamilton
Cari Vanderperk – Director, Watershed Management, Hamilton Water
Susan Girt – Manager, Compliance & Regulations, Hamilton Water
Wendy Jackson – Senior Regulatory Coordinator, Hamilton Water
Lee Veritis – Project Manager, Compliance Support Group, Hamilton Water
BCOS

Tansley, Larry

From: Aaron Detlor [REDACTED]
Sent: February 28, 2023 2:33 PM
To: Burt, Stephen (MECP)
Cc: Aaron Detlor; Tim Gilbert; Tansley, Larry; Milakovic, David (MECP); Hussain, Lubna I. (MECP); Chee Sing, Elizabeth (MECP); [REDACTED]
Subject: Re: Chedoke Creek Remediation

Good Afternoon Mr. Burt:

I am writing with respect to yours of December 29, 2023.

We believe that the spill caused by the City of Hamilton has had and is having a significant impact on established rights and interests where 'harvesting rights' have been significantly impacted.

Unfortunately the City of Hamilton has not undertaken any engagement to address the rights that have been impacted despite repeated requests. We have been advised that the City of Hamilton is proposing to recommence the Chedoke Creek and Cootes Paradise Remediation Project on or or about June of 2023. Unfortunately the remediation plans have not been undertaken with any view to ensuring that harvesting and other rights are contemplated or restored to a treaty based position.

Further to your invitation we would like to meet with you at your earliest opportunity to discuss concerns in relation to impacts of the remediation work on hunting, harvesting and fishing which would then be incorporated into the remediation plan.

Regards,

Aaron Detlor

cOn Dec 29, 2022, at 3:53 PM, Burt, Stephen (MECP) <Stephen.Burt@ontario.ca> wrote:

Mr. Detlor,

Attached is our response to the November 1, 2022 letter from Gilbert's Law. As requested, I am responding to you directly.

Please note that I will be away from the office until January 10, 2023 and can follow-up with you upon my return to address any comments or concerns.

Regards,

<image001.png>

Stephen Burt
District Manager
Hamilton District

Ministry of the Environment, Conservation and Parks
stephen.burt@ontario.ca | Tel: (905) 541-4533

We want to hear from you. How was my service? You can provide feedback at 1-888-745-8888



Please consider the environment before printing this email

From: Aaron Detlor [REDACTED]
Sent: November 1, 2022 10:33 PM
To: Burt, Stephen [REDACTED] <stephen.burt@ontario.ca>
Cc: Aaron Detlor [REDACTED]; Melissa Amerc [REDACTED]; Brian Doolittle [REDACTED]; [REDACTED] Milakovic, David (MECP) [REDACTED]; [REDACTED]
Subject: Re: Chedoke Creek Remediation

CAUTION – EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.

Good Evening Mr. Burt

You can reply to me directly. I just wanted Gilbert's to get the letter out as I was busy on a few other matters.

Regards,

Aaron Detlor

On Nov 1, 2022, at 8:47 PM, Burt, Stephen (MECP) <Stephen.Burt@ontario.ca> wrote:

Hi Melissa,

Thank you for your email. I have received the letter and will follow-up once I have had a chance to review the details.

Thanks,

<image001.png>

Stephen Burt
District Manager
Hamilton District
Ministry of the Environment, Conservation and Parks
stephen.burt@ontario.ca | Tel: (905) 541-4533

We want to hear from you. How was my service? You can provide feedback at 1-888-745-8888



Please consider the environment before printing this email

From: Melissa Amero [REDACTED]
Sent: November 1, 2022 12:45 PM
To: Burt, Stephen (MECP) <Stephen.Burt@ontario.ca>
Cc: [REDACTED]
[REDACTED]
[REDACTED]
Subject: Chedoke Creek Remediation

CAUTION – EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.

Good afternoon,

Please see the attached correspondence from Tim Gilbert in regards to the above noted matter.

Should you have any questions or concerns, please do not hesitate to contact us.

Thank you,

Melissa Amero

Melissa Amero - She/Her
Executive Assistant
Gilbert's LLP
Lawyers | Patent and Trademark Agents

Tel: 416.703.1100
Fax: 416.703.7422
www.gilbertslaw.ca

Waterfront Innovation Centre
125 Queens Quay East, 8th Floor
P.O. Box 19
Toronto, Ontario M5A 0Z6
Canada

This e-mail is confidential and may contain privileged information. If you are not an intended recipient, please delete this e-mail and notify us immediately. Any unauthorized use or disclosure is prohibited.

<Response to HDI - December 2022_ final.pdf>

From: Aaron Detlor [REDACTED]
Date: February 28, 2023 at 2:21:35 PM EST
To: "Khan, Carlyle" <Carlyle.Khan@hamilton.ca>
Cc: Aaron Detlor [REDACTED], "Winters, Nick" <Nick.Winters@hamilton.ca>, Office of the Mayor <Officeofthe.Mayor@hamilton.ca>, "Smith, Janette" <Janette.Smith@hamilton.ca>
Subject: Re: Chedoke Creek Remediation Correspondence - February 16, 2023

Good Afternoon Mr. Khan:

As you are aware we have been asking for engagement on Chedoke Creek Remediation Project which to date has not taken place.

Can you please advise how and when engagement will proceed.

We have also asked to sit down with City of Hamilton to discuss engagement more broadly however we have not heard back as to how and when engagement will be undertaken on Public Works activity as well as other City of Hamilton projects.

Regards,

Aaron Detlor

On Feb 16, 2023, at 5:21 PM, Khan, Carlyle <Carlyle.Khan@hamilton.ca> wrote:

Good afternoon,

Please find attached a letter in relation to the Chedoke Creek Remediation Project.

Regards,

Carlyle Khan
General Manager, Public Works
City of Hamilton
100 King St W, Hamilton, ON L8P 1A2
Phone: (905) 546-2424 Ext. 2313
E-mail: carlyle.khan@hamilton.ca
<image001.png>

Ministry of the Environment,
Conservation and Parks
Drinking Water and Environmental
Compliance Division
West Central Region

119 King Street West, 9th Floor
Hamilton, Ontario L8P 4Y7
Tel.: 905 521-7640
Fax: 905 521-7820

Ministère de l'Environnement de la
Protection de la nature et des Parcs
Division de la conformité en matière
d'eau potable et d'environnement
Direction régionale du Centre-Ouest

119 rue King Ouest, 12^e étage
Hamilton (Ontario) L8P 4Y7
Tél.: 905 521-7640
Télééc.: 905 521-7820



March 3, 2023

Nick Winters
Director
Hamilton Water
100 King Street West, 9th Floor
Hamilton, Ontario, L8P 1A2
Nick.Winters@hamilton.ca

Dear Nick,

I have received your correspondence dated February 23, 2023 providing an update on plans to resume dredging work in Chedoke Creek as required by Directors Order #1-PE3L3.

As outlined in our letters on September 2 and November 15, 2022, the City of Hamilton is responsible for completing the remediation activities in Chedoke Creek and is best positioned to discuss concerns about the remediation and its potential impacts on the natural environment with the Indigenous communities and various stakeholders who are interested in the work.

I have recently completed my review of correspondence dated February 6, 2023, from Tim Crowley, Project Manager Watershed Management, City of Hamilton, the City of Hamilton. The correspondence confirms that the City of Hamilton has now obtained all of the required work permit extensions and renewals from the various permitting agencies.

The correspondence confirms that The City of Hamilton has had discussions with the Ministry of Natural Resources and Forestry, the Hamilton Conservation Authority and the Canadian Department of Fisheries and Oceans regarding the work permits and seeking in-water work restriction exception. The City of Hamilton has confirmed that the work permits, and approvals related to in water portion of this project did not recommend a fisheries timing window be adhered to as the only restriction was related to the water temperature threshold for the mussel relocation which was completed in 2022 and is not required for work completed within 2023.

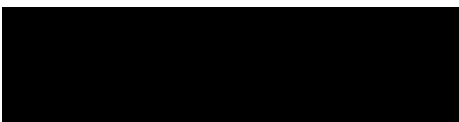
Based on this information, I am of the opinion that there is no need to further delay the implementation of the Chedoke Creek Workplan, such that the dredging activities may be completed by August 31st, 2023, with such ancillary activities set out in the Chedoke Creek Workplan to be completed by December 31, 2023. I will be using the Ministry's Compliance Policy Applying Abatement and Enforcement Tools for appropriate next steps.

I am urging that the City take whatever steps are necessary to complete the clean up in a timely manner to ensure that further impacts caused by the significant discharge of sewage in the Chedoke Creek are prevented, and remedial activities are completed in a manner that is protective of the natural environment and prevents further impairment of the water quality. The City's immediate attention to this will facilitate moving forward on other important measures required by the Order in relation to the implementation of the Cootes Paradise Workplan that will further mitigate the harms caused by the presence of contaminants and raw sewage in Chedoke Creek and Cootes Paradise. If dredging activities do not commence as soon as possible, the effects resulting from the spill will persist and contribute to the continued degradation and adverse effects being experienced in the watershed.

In terms of the City's request to re-consider issuing an access order under s. 196(2) of the Environmental Protection Act and the corresponding provision in ss.104(3) of the Ontario Water Resources Act, the ministry is again confirming that such an order is not appropriate in the circumstances. An application to the Court, naming the Ministry as a respondent, will not resolve the issues raised in your correspondence and will further delay the important remediation work required by the Order. Any application will be responded to by the Ministry.

Please contact me at stephen.burt@ontario.ca or 905-541-4533, should you have any questions.

Sincerely,

A solid black rectangular box used to redact the signature of Stephen Burt.

Stephen Burt
District Manager

Cc:

Susan Girt, Manager, Compliance and Regulations, Hamilton Water
Cari Vanderperk, Director Watershed Management
Lubna Hussain, Director, West Central Region, MECP
Scotty McCaw, Issues Project Co-ordinator, MECP
Elizabeth Chee Sing, Supervisor, Water Compliance, MECP

Ministry of the Environment, Conservation
and Parks
Drinking Water and Environmental
Compliance Division
West Central Region
Hamilton District Office

119 King Street West, 9th Floor
Hamilton, Ontario L8P 4Y7

Ministère de l'Environnement de la Protection
de la nature et des Parcs
Division de la conformité en matière
d'eau potable et d'environnement
Direction régionale du Centre-Ouest
Bureau de district de Hamilton

119 rue King Ouest, 9e étage
Hamilton (Ontario) L8P 4Y7



March 3, 2023

The City of Hamilton
71 Main Street West, 1st Floor
Hamilton, ON L8P 4Y5

Attention City Clerk:

Re: Amendment of Item No.6 of Director's Order No.1-PE3L3

I have recently completed my review of correspondence dated February 6, 2023, from Tim Crowley, Project Manager Watershed Management, for the City of Hamilton. The correspondence confirms that the City of Hamilton has now obtained all the required work permit extensions and renewals from the various permitting agencies. I have also considered the discussions with City of Hamilton held on February 2 and 7, 2023 where updates on the Chedoke Creek Workplan and timelines were discussed.

The correspondence confirms that the City of Hamilton has had discussions with the Ministry of Natural Resources and Forestry, the Hamilton Conservation Authority and the Canadian Department of Fisheries and Oceans regarding the work permits and seeking in-water work restriction exception. The City of Hamilton has confirmed that the work permits, and approvals related to in water portion of this project did not recommend a fisheries timing window be adhered to as the only restriction was related to the water temperature threshold for the mussel relocation which was completed in 2022 and is not required for work completed within 2023. I am satisfied that, under the conditions set out in the Order and through the required permits and authorizations, that the Workplan prepared by the City of Hamilton will protect fish and aquatic habitat while the remediation work is completed. Any effects from the remediation work would be temporary in nature and occur during the actual dredging and would be minimal taking into consideration the protective measures that will be in place. Based on this information I am of the view that the City can commence the dredging activities as set out in the approved Chedoke Creek Workplan as soon as the weather permits.

Having considered these submissions, the previous delays to the project and further to our ongoing discussions related to compliance with Director's Order No.1-PE3L3, I am of the opinion that the project timelines require stricter management to ensure the remediation work is completed this year. I am of the view that it is necessary and advisable that the Director's Order be amended to ensure this work commences as soon as possible to prevent further negative environmental impacts to Chedoke Creek and the Cootes Paradise watershed from the presence of contaminants and raw sewage that remain in Chedoke Creek from the spill that occurred during the period between January 28, 2014, and July 18, 2018. If dredging activities do not commence as soon as possible, the effects resulting from the spill will persist and contribute to the degradation and adverse effects being experienced in the watershed.

As such, pursuant to my authority under sections 157.3 of the *Environmental Protection Act*, s.16.4 of the *Ontario Water Resources Act*, and sections 49 and 54 of the *Legislation Act, 2006*, I hereby revoke Item No. 6 of Director's Order No.1-PE3L3 (as amended) and replace it with the following:

6. Commence activities in the approved Chedoke Creek Workplan as soon as possible such that all dredging activities are completed by August 31, 2023, with the remaining activities in the approved Chedoke Creek Workplan completed by December 31, 2023.

All other Items in the Order remain in effect, and unaltered. This Order alters and constitutes part of Director's Order No. 1-PE3L3, issued on December 4, 2020 (as amended). You may require a hearing before the Ontario Land Tribunal (OLT) in respect of this amendment to Item No. 6 in accordance with the *Environmental Protection Act* and the *Ontario Water Resources Act*. If you require a hearing, you have 15 days after the service of this Order to serve notice upon the OLT and the Director.

I encourage you to inform the indigenous communities and various stakeholders who are interested in the work that is required pursuant to the Director's Order, of this amendment.

If you have any questions concerning this amendment to Director's Order No. 1-PE3L3, please do not hesitate to contact me.

Regards,



Stephen Burt
District Manager & Director appointed for the purposes of s.157.3 EPA, s.16.4 OWRA.

Cc. Lubna Hussain, Director, West Central Region, MECP
Elizabeth Chee Sing, Supervisor, MECP
Nick Winters, Director, Hamilton Water
Cari Vanderperk, Director of Watershed Management, Hamilton Water
Susan Girt, Compliance & Regulations Manager, Hamilton Water



City of Hamilton
Public Works Department | Hamilton Water Division
Hamilton Water Director's Office
100 King Street West, 9th Floor
Hamilton, ON L8P 1A2
Phone: 905.546.2424, ext. 1474
E-mail: Nick.Winters@hamilton.ca

March 3, 2023

Sent by email to:

Aaron Detlor
Haudenosaunee Confederacy Chiefs Council
c/o Haudenosaunee Development Institute

Dear Mr. Detlor,

Re: Chedoke Creek Remediation

We write to you further to our letters dated January 23, 2023 and February 16, 2023. In our first letter, we offered to engage with the Haudenosaunee Development Institute ("HDI"), on behalf of the Haudenosaunee Confederacy Chiefs Council ("HCCC"), and, specifically, to enter into an Environmental Monitoring Agreement with the HCCC/HDI on similar terms as with other First Nations Communities. We received no response.

We followed up with a second letter on February 16, 2023 to inform the HDI/HCCC that the City of Hamilton intends to proceed with the Chedoke Creek Remediation Project ("Remediation Project") in June of 2023 and received an email response on February 28, 2023 from you, wherein you expressed a desire to engage with the City of Hamilton regarding the Remediation Project. In that email, you indicate that you have been asking for engagement and that such engagement has not taken place. This is simply incorrect.

The City contacted the HDI by email on February 17, 2021 to request a meeting to discuss this work. A virtual meeting occurred on February 25, 2021, which included the City's consultant who was available to address any technical questions. The HDI raised concerns regarding lack of consultation at that meeting; that the MECP does not have jurisdiction to issue the Director's Order that requires the remedial work; and indicated that the City needed "consent" from the HDI prior to complying with the Director's Order. The HDI asked for copies of all technical reports relating to the Remediation Project by no later than March 12, 2021 and all such reports were mailed to the HDI on March 11, 2021. To date, there has been no substantive comments provided to the City by the HDI with respect to any of those reports.

The City has engaged with all of the First Nation Communities and with the HDI. The City, as directed by City Council, also offered to enter into agreements with all of the First Nations Communities, if they desired, for Environmental Monitors to attend the work site during the course of the Remediation Project. Only the HDI has insisted that the City satisfy numerous additional conditions, including conditions that go beyond the scope of this Remediation Project, in order for the Remediation Project to proceed.

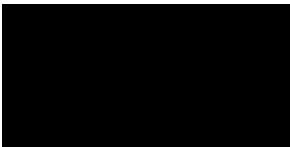
Haudenosaunee Development Institute
Page Two

We are attaching to this letter a copy of an Environmental Monitoring Agreement, which includes capacity funding for an Environmental Monitor from HDI to attend and observe the Remediation Project. This form of agreement has been entered into with the other interested First Nation Communities, and the City is also prepared to enter into this agreement with the HDI/HCCC.

On March 3, 2023, we received an amendment to the Director's Order (also attached) that moved up our compliance deadline such that the Remediation Project now must be completed by August 31, 2023. We now need to move up contractor mobilization dates in order to meet this new deadline.

We are therefore asking that the HDI/HCCC execute the agreement and return it to our attention no later than March 10, 2023. If the City does not receive a response or receives one that continues to insist on acknowledgements, confirmations, and consent from the HDI including with respect to other future projects, we will have no option but to presume that the HDI is not interested in providing an Environmental Monitor for the Remediation Project and proceed accordingly.

Yours Truly,



Nick Winters
Director - Hamilton Water
City of Hamilton

Attachments (2)

March 7, 2023

**City of Hamilton
Chedoke Creek Targeted Dredging Project
Environmental Monitoring**

Subject: HDI Environmental Monitoring at Chedoke Creek Targeted Dredging Project.

The purpose of this agreement (this "Agreement") is to provide Haudenosaunee Development Institute ("HDI") with capacity assistance for an Environmental Monitor (the "Monitor") in connection with environmental observation required for the Targeted Dredging of Chedoke Creek ("Project") being coordinated by City of Hamilton ("CITY"), in accordance with the Rates set out at Schedule A attached hereto.

Subject to the below terms and conditions, the CITY and HDI (collectively, the "Parties") hereby agree that the CITY will provide capacity funding to HDI to reimburse reasonable expenses incurred in connection with the monitoring.

1. The Monitors selected by HDI shall have appropriate qualifications for the work required including training in monitoring, as set forth in **Schedule A**. Upon request by CITY, HDI or the applicable Monitor shall provide written evidence of such Monitor's qualifications to CITY which evidence shall include a current copy of such Monitor's resume.
2. The amount billed by HDI in respect of the Monitoring work shall not exceed the amounts indicated in **Schedule A** attached hereto. Invoiced amounts by HDI, in accordance with **Schedule A**, shall be payable to **the Haudenosaunee Development Institute** at the following:

Bank # 001 Transit # [REDACTED]
Bank Account Number # [REDACTED]
Email address for remittance – [REDACTED]
3. The CITY will pay the Monitor a minimum of three (3) hours, plus travel time and mileage, when fieldwork has been cancelled by the CITY while Monitors are travelling to site or upon arrival.
4. The Parties agree that the CITY will pay capacity funding, described within this Agreement, to an upset limit of \$40,000.00 CAD. Where HDI proposes additional capacity funding, written evidence establishing the need is required, as additional capacity funding sought shall only occur where absolutely required and in agreement by all Parties.
5. Any issues arising from this Agreement that requires the approval of both Parties, shall be brought to an Issues Management Committee (the "Committee"). The Committee shall be struck within 5 business days or less, and consensus will be sought. The members of the

Committee are as follows and can be delegated to other members of their respective organization:

Jake Linklater, HDI
Director, Engagement & Approvals

[REDACTED]

Nick Winters
Director, Hamilton Water
Nick.Winters@hamilton.ca

6. The Parties agree that the Monitors are not employees, contractors, or sub-contractors of the CITY, their consultant or contractor(s) and that the Monitors will be responsible for their own personal protective equipment, such as hard hats, safety boots, and safety vests, unless specific or otherwise unique personal protective equipment is required, in which case will be provided or reimbursed by the CITY. All Monitors shall comply with the personal protective equipment requirements on the Project site, including adhering to the contractor(s) Personal Protective Equipment Standards.
7. Monitors shall follow the reasonable instructions of the CITY, their consultant and contractor(s) conducting the construction work concerning safety practices, and the Monitors will attend "tailgate" safety meetings if requested.
8. It is recognized that the contractor (Milestone Environmental Contracting Inc.) occupies the position of "Constructor" on the Project Site, and as such shall be in charge of compliance with the requirements of the Occupational Health and Safety Act.
9. The CITY or their consultant will coordinate site meeting locations and times directly with HDI's field supervisor. The contact information for the HDI field supervisor is:

Archaeology

Sharann Martin

[REDACTED]

[REDACTED]

Environmental

Raechelle Williams

[REDACTED]

[REDACTED]

10. The CITY will provide payment by cheque or bank transfer within thirty (30) days upon receipt of an invoices. Invoices shall explain in reasonable detail each Monitors time, fees, reasonable mileage and meal expenses, and the nature and date of work performed. All invoices should be addressed directly to the CITY, and the relevant project name should be noted in the text of each invoice.

Invoices to be submitted to the following:

Tim Crowley

Public Works Department
Hamilton Water, City of Hamilton
Work: (905) 546-2424 Ext.5063

11. This agreement is effective as of the date of execution by the Parties. In the event Project related activities continue beyond, December 31, 2023, the Parties agree to issue a new agreement to address HDI involvement in the Project after December 31, 2023.
12. This agreement may be terminated by either party upon thirty (30) days written notice to the other party. Electronic communications constitute written notice.

Jake Linklater, HDI
Director, Engagement & Approvals
[REDACTED]

Nick Winters
Director, Hamilton Water
Nick.Winters@hamilton.ca

13. HDI agrees that it shall comply with all requirements of the Workplace Safety and Insurance Act and will provide proof of same prior to commencement of work. HDI acknowledges that Milestone Environmental Contracting Inc. shall not be required to delay work on the Project in the event that HDI has not complied with the foregoing.
14. HDI pays Workplace Safety and Insurance Board ("WSIB") contributions in respect of the Monitors and will, at its own expense, maintain for the term of this agreement a comprehensive general liability ("CGL") policy or policies with a limit of at least \$2 million.
15. HDI shall provide the CITY with evidence of such insurance above in the form of a memorandum of insurance issued by the insurer, upon request. HDI acknowledges that Milestone Environmental Contracting Inc. shall not be required to delay work on the Project in the event that HDI has not complied with the foregoing.
16. HDI agrees that the Monitor will perform their activities safely, in a good and competent manner, in compliance with all applicable laws, regulations, and guidelines.
17. The Monitor shall comply with the personal protective equipment requirements on the Project site, including adhering to Milestone Environmental Contracting Inc. Health and Safety protocols while on site. If specialized personal protective equipment is required, this will be provided by the CITY or Milestone Environmental Contracting Inc.
18. The Monitor shall follow the reasonable instructions of Milestone Environmental Contracting Inc. conducting the construction work concerning safety practices.

19. The Parties agree that this Agreement and any amendments thereto, if any, constitute the entire agreement between the Parties as to the matters governed hereby and supersede and replaces all prior arrangements, agreements, or understandings with respect to such matters.
20. Each Party represents and warrants to the other that its undersigned signatories are authorized to execute this agreement on behalf of the respective Party.
21. Both parties will comply with the *Occupational Health and Safety Act*, R.S.O. 1990, C. O.1, the *Ontario Human Rights Code*, R. S. O. 1990, c. H.19, and maintain a safe, harassment free work environment.
22. If archaeological resources are encountered at any time during construction or other Project related activity, all excavation or other activity that could disturb the site shall immediately cease, and the CITY shall immediately notify HDI's Archaeological Supervisor or designate. The Parties shall work collaboratively to minimize impacts and ensure respectful treatment of any archaeological resources in accordance with the practices and values of HDI as identified by HDI
23. If human remains are encountered at any time during construction or other Project related activity, the following steps shall be taken:
 - a. All excavation or other activity that could disturb the site shall immediately cease, and the area shall be secured in a manner which protects the site location and prevents public access and trespass; and
 - b. In addition to any notifications required under the *Funeral, Burial and Cremation Services Act, 2002*, SO 2002, C 33, the Proponent shall immediately contact HWN's duly appointed Archaeological Supervisor or designate; and
 - c. HWN shall be permitted to conduct any ceremonies on site in relation to the human remains that may be of Aboriginal ancestry ("Ancestral Remains"); and
 - d. HWN shall be consulted about all steps in the investigation and any decisions or agreements to be made regarding Ancestral Remains.
24. HDI acknowledges that the CITY is an institution to which the Municipal Freedom of Information and Protection of Privacy Act (Ontario) (hereinafter, "MFIPPA") applies and may have to disclose information relating to the Project and this Agreement in the event of an access request made under MFIPPA.
25. This Agreement may be executed in counterparts (in either original or electronic form), each of which will be deemed to be an original and all of which when taken together will constitute the same agreement.

Signed on behalf of:

Haudenosaunee Development Institute

The foregoing accurately reflects the terms of the arrangement which we hereby agree to enter into, and the undersigned agrees to be legally bound hereby.

Accepted at _____ this _____ day of _____, 2023.

By: _____

City of Hamilton

Name

Title

Accepted at _____ this _____ day of _____, 2023.

SCHEDULE A –HDI MONITOR RATES

<u>Title</u>		<u>Qualifications</u>	<u>Type</u>	<u>Rate</u>	<u>Travel Allowance</u>
HDI Archaeology Consultant & Monitor Program Supervisor		Archaeology School Certificate & HCCC Archaeology Monitor Training Certificate	Archaeology Supervisor	\$165.00/hr	
Construction Monitors		HCCC Construction Monitor Training Certificate	Construction Monitor	\$140.00/hr	
Archaeology Monitors		HCCC Archaeology Monitor Training Certificate	Archaeology Monitor	\$140.00/hr	
Environmental Supervisor		University/College Diploma/Certificate, CAN-CISEC Certified	Environmental Supervisor	\$180.00/hr	
Environmental Monitor		University/College Diploma/Certificate, Environmental or related fields	Environmental Monitors	\$140.00/hr	
Technical Level I				\$200/hr	
Technical Level II				\$350/hr	
Meal and Travel Allowance: As set by the _____					

From: Aaron Detlor [REDACTED]
Sent: Tuesday, March 7, 2023 11:27 AM
To: Winters, Nick
Cc: Khan, Carlyle; Aaron Detlor; Tim Gilbert; Tansley, Larry; Milakovic, David (MECP); Hussain, Lubna I. (MECP); Chee Sing, Elizabeth (MECP); [REDACTED]; Aaron Detlor; Jock Hill [REDACTED]; Holtby Levine, Keri (she,her | elle,la) (TC/TC); [REDACTED]; Stephen.Burt@ontario.ca; McLean, Donna (she,her | elle,la) (TC/TC); [REDACTED]
Subject: Re: Chedoke Creek Remediation Correspondence - February 16, 2023
Attachments: image001.png

Good Morning Mr Winters:

We are reviewing your proposal at our meeting of November 8, 2023.

I can confirm that how long is neither the Province of Ontario nor Canada have undertaken any engagement despite our request to meet to determine how the Crown wishes to undertake engagement in relation to the established rights of the Haudenosaunee which have been impaired by the spill and which have not been addressed by way of the current remediation plan(s).

I can also confirm my repeated requests to the City of Hamilton to sit down and begin a good faith process to address the damages to Haudenosaunee rights and interests caused by the City of Hamilton's release of 24 billion litres of sewage into the traditional and treaty territory of the Haudenosaunee and how those damages can be addressed in terms of the proposed remediation.

We have also made the request that the City of Hamilton honour its commitments by way of the Provincial Policy Statement and in particular section 1.2.2 which to date has been ignored.

We have accepted the invitation from both MECP and Transport Canada to begin engagement that to date has not occurred and we are concerned that Mr. Burt has revoked revoke Item No. 6 of Director's Order No.1-PE3L3 (as amended) without notification and obviously without engagement.

Mr. Burt's letter indicates he is in receipt of February 6, 2023 correspondence from Tim Crowley of the City of Hamilton which indicates that all required work permit extensions and renewals have been obtained from the various permitting agencies.

This correspondence was not shared with us and we were not permitted to discuss any of our issues with the various permitting agencies. We currently understand that the Canadian Department of Fisheries and Oceans does not delegate any engagement and we have no record of any engagement with DFO despite knowledge on DFO's part of our concerns and issues in relation to how the proposed remediation is impairing infringing and interfering with established treaty rights.

Could you please provide a copy of the February 6, 2023 correspondence. I would ask that Mr. Burt, who is copied, please provide a list of all of the various permitting agencies as well as the permits so that we can follow up with them to determine how to move forward. I would also note for the record that Mr. Burt never contacted us in relation to the 157.3 EPA review request.

We look forward to sitting down with you to better understand how and when your department specifically and Hamilton generally wishes to engage in terms of its commitments including 1.2.2 of the PPS.

Regards,

Aaron Detlor

On Fri, Mar 3, 2023, 5:45 PM Winters, Nick <Nick.Winters@hamilton.ca> wrote:

Good Afternoon Mr. Detlor:

As Carlyle is away on vacation, please find attached a letter in response to your questions regarding the Chedoke Creek Remediation Project.

Also attached is the Environmental Monitoring Agreement, and the amendments to MECP Director's Order 1-PE3L3, both of which are referenced in the letter.

Looking forward to your response,

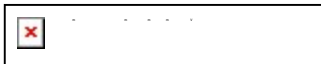
Nick Winters (He/Him)

Director, Hamilton Water Division

Public Works Department, City of Hamilton

Office: (905) 546-2424 Ext.1474

Cellular: (905) 973-4970



Collective Ownership. Steadfast Integrity. Courageous Change. Sensational Service. Engaged, Empowered Employees.

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From: Aaron Detlor [REDACTED]
Sent: February 28, 2023 2:21 PM
To: Khan, Carlyle <Carlyle.Khan@hamilton.ca>
Cc: Aaron Detlor [REDACTED]; Winters, Nick <Nick.Winters@hamilton.ca>; Office of the Mayor <Officeofthe.Mayor@hamilton.ca>; Smith, Janette <Janette.Smith@hamilton.ca>
Subject: Re: Chedoke Creek Remediation Correspondence - February 16, 2023

Good Afternoon Mr. Khan:

As you are aware we have been asking for engagement on Chedoke Creek Remediation Project which to date has not taken place.

Can you please advise how and when engagement will proceed.

We have also asked to sit down with City of Hamilton to discuss engagement more broadly however we have not heard back as to how and when engagement will be undertaken on Public Works activity as well as other City of Hamilton projects.

Regards,

Aaron Detlor

On Feb 16, 2023, at 5:21 PM, Khan, Carlyle <Carlyle.Khan@hamilton.ca> wrote:

Good afternoon,

Please find attached a letter in relation to the Chedoke Creek Remediation Project.

Regards,

Carlyle Khan

General Manager, Public Works

City of Hamilton

100 King St W, Hamilton, ON L8P 1A2

Phone: (905) 546-2424 Ext. 2313

E-mail: carlyle.khan@hamilton.ca

<image001.png>

<HDI Letter - Chedoke Creek Remediation - February 16, 2023.pdf>



From: Aaron Detlor [REDACTED]
Sent: Tuesday, March 7, 2023 11:43 AM
To: Burt, Stephen (MECP)
Cc: Aaron Detlor; Tim Gilbert; Tansley, Larry; Milakovic, David (MECP); Hussain, Lubna I. (MECP); Chee Sing, Elizabeth (MECP)
Subject: Re: Chedoke Creek Remediation

Good Morning Mr. Burt:

I am just confirming my phone message. As indicated the City of Hamilton did not speak with us prior to submitting their February 6, 2023 correspondence mentioned in your letter of March 6, 2023.

Unfortunately you did not provide notice or reach out with respect to the 157.3 EPA process which we can address further at some point however my request on voice mail was for contact information for the Canadian Department of Fisheries and Oceans.

We have not heard from them at all in relation to this matter despite reaching out several times over the past year and it would be of assistance if you could provide the contact information for those issuing permits/approvals etc on behalf of DFO for this Project. I just spent the last hour trying to find on their website and by calling [REDACTED] but was not able to get in touch with a live person let alone anyone who knows about this Project.

Regards,

Aaron Detlor

On Dec 29, 2022, at 3:53 PM, Burt, Stephen (MECP) <Stephen.Burt@ontario.ca> wrote:

Mr. Detlor,

Attached is our response to the November 1, 2022 letter from Gilbert's Law. As requested, I am responding to you directly.

Please note that I will be away from the office until January 10, 2023 and can follow-up with you upon my return to address any comments or concerns.

Regards,

<image001.png>

Stephen Burt
District Manager
Hamilton District
Ministry of the Environment, Conservation and Parks
stephen.burt@ontario.ca | Tel: (905) 541-4533



From: Aaron Detlor [REDACTED]
Sent: November 1, 2022 10:33 PM
To: Burt, Stephen (MECP) <Stephen.Burt@ontario.ca>
Cc: Aaron Detlor [REDACTED]; Melissa Amero [REDACTED]; Brian Doolittle [REDACTED];
Tim Gilbert [REDACTED]; Milakovic, David (MECP) [REDACTED]
Subject: Re: Chedoke Creek Remediation

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.

Good Evening Mr. Burt

You can reply to me directly. I just wanted Gilbert's to get the letter out as I was busy on a few other matters.

Regards,

Aaron Detlor

On Nov 1, 2022, at 8:47 PM, Burt, Stephen (MECP) <Stephen.Burt@ontario.ca> wrote:

Hi Melissa,

Thank you for your email. I have received the letter and will follow-up once I have had a chance to review the details.

Thanks,

<image001.png>

Stephen Burt
District Manager
Hamilton District
Ministry of the Environment, Conservation and Parks
stephen.burt@ontario.ca | Tel: (905) 541-4533

We want to hear from you. How was my service? You can provide feedback at 1-888-745-8888



From: Melissa Amero [REDACTED]
Sent: November 1, 2022 12:45 PM
To: Burt, Stephen (MECP) <Stephen.Burt@ontario.ca>
Cc: [REDACTED]
Tim Gilbert [REDACTED]
Subject: Chedoke Creek Remediation

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.

Good afternoon,

Please see the attached correspondence from Tim Gilbert in regards to the above noted matter.

Should you have any questions or concerns, please do not hesitate to contact us.

Thank you,

Melissa Amero

Melissa Amero - She/Her
Executive Assistant
Gilbert's LLP
Lawyers | Patent and Trademark Agents

Tel: 416.703.1100
Fax: 416.703.7422
www.gilbertslaw.ca

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P.O. Box 19
Toronto, Ontario M5A 0Z6
Canada

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<Response to HDI - December 2022_ final.pdf>