

## Certificate of Property Use

Environmental Protection Act, R.S.O. 1990, c.E.19, s.168.6 and 197

Certificate of Property use number RA1093-10-01  
Risk Assessment number RA1093-10e

**Owner:** The Corporation of the City of Brockville  
1 King Street West  
P.O. Box 5000  
Brockville, ON K6K 7A5

**Site:** Reynolds Park, 19, 23 & 25 Water Street East  
Brockville, Ontario

with a legal description of:

**LOT 50-52 Block 10 Plan 67: Water Lot in the St. Lawrence River in front of the City of Brockville opposite Lot 50 Block 10 Plan 67; Water Lot in the St. Lawrence River in front of the City of Brockville opposite Lot 51 Block 10 Plan 67; Water Lot in the St. Lawrence River in front of the City of Brockville opposite Lot 52 Block 10 Plan 67, Part 1, 28R7358.**

**Being All of PIN 44162-0061**

The conditions of this Certificate of Property Use (CPU) address the Risk Management Measures in the Risk Assessment noted above and described in detail in Part 1 below (Risk Assessment). In the event of a conflict between the CPU and the Risk Assessment, the conditions of the CPU take precedence.

### Summary:

Refer to Part 1 of the CPU, Interpretation, for the meaning of all the defined capitalized terms that apply to the CPU.

- |    |  |    |
|----|--|----|
| i) | CPU requirements addressed in Part 4 of the CPU, Director Requirements, are summarized as follows: |    |
|    | a. Installing/maintaining any equipment  | No |
|    | b. Monitoring any contaminant  | No |

- c. Refraining from constructing any building unless as specified Yes
- d. Refraining from using the Property for any use specified Yes
- e. Maintaining a barrier to site soils with Hard Cap  
or Shallow Soil Cap Yes
- f. Maintaining a shoreline protection system Yes
- g. Preparing and implementing a soil, water and sediment  
management plan for the Property. Yes
- h. Preparing and implementing a health and safety plan for  
the Property. Yes

- ii) Duration of Risk Management Measures identified in Part 4 of the CPU is summarized as follows:
  - a. The barrier to site soils over the entirety of the Property shall be maintained for as long as the Contaminants of Concern are present on the Property.
  - b. The soil, water and sediment management plan shall be required for the Property during any Intrusive Activities for as long as the Contaminants of Concern are present on the Property.
  - c. The health and safety plan shall be required for the Property during any Intrusive Activities for as long as the Contaminants of Concern are present on the Property.
  - d. All other Risk Management Measures shall continue indefinitely until the Director alters or revokes the CPU.

## Part 1: Interpretation

In the CPU the following terms shall have the meanings described below:

“Act” means the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended.

“Adverse Effect” has the same meaning as in the Act; namely,

- (a) impairment of the quality of the natural environment for any use that can be made of it;
- (b) injury or damage to property or to plant or animal life;
- (c) harm or material discomfort to any person;
- (d) an adverse effect on the health of any person;
- (e) impairment of the safety of any person;
- (f) rendering any property or plant or animal life unfit for human use;
- (g) loss of enjoyment of normal use of property; and,
- (h) interference with the normal conduct of business.

“Approved Model” has the same meaning as in subsection 1 (1) of Schedule C of O. Reg. 153/04, namely, the data file entitled “Modified Generic Risk Assessment Model” and dated October 19, 2009 as amended from time to time, that is maintained by the Ministry as part of its Brownfield initiative and is available on the Internet and may be available in such other manner as the Minister considers appropriate.

“Capping Soil” means,

(a) soil found on, in or under the Property in which no Property Specific Contaminants of Concern are present, or

(b) soil that meets the applicable site condition standards for the Property, and does not contain any contaminant for which no applicable site condition standard for soil is prescribed under Part IX (Site Condition Standards and Risk Assessment) and which is associated with any potentially contaminating activity described in the Risk Assessment.

“Competent Person” has the same meaning as in the Occupational Health and Safety Act, R.S.O. 1990, c. O.1.

“Contaminant” has the same meaning as in the Act; namely any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them, resulting directly or indirectly from human activities that causes or may cause an Adverse Effect.

“Contaminants of Concern” has the meaning as set out in Item 3.2 of the CPU.

“CPU” means this Certificate of Property Use as may be altered from time to time and bearing the document number **RA1093-10-01**.

"Director" means the undersigned Director or any other person appointed as a Director for the purpose of issuing a certificate of property use.

“EBR” means the *Environmental Bill of Rights, 1993*, S.O. 1993, c. 28, as amended.

“Hard Cap” means an asphalt or concrete cover layer, above the Property Specific Contaminants of Concern, that is at least 225 millimetres thick, and consists of at least 75 millimetres thickness of hot mix asphalt or poured concrete underlain by Granular “A” aggregate or equivalent material, and includes a building slab or building foundation and floor slab meeting these specifications.

“Intrusive Activities” means any intrusive activity undertaken at the Property, such as excavating or drilling into soil or ground water, which may disturb or expose Property Specific Contaminants of Concern at the Property.

"Ministry" means the ministry of the government of Ontario responsible for the administration of the Act, currently named Ontario Ministry of the Environment, Conservation and Parks.

“O. Reg. 153/04” means Ontario Regulation 153/04, “Record of Site Condition – Part XV.1 of the Act” as amended, made under the Act.

“Owner” means the owner(s) of the Property, beginning with the person(s) to whom the CPU is issued, described in the “Owner” section on Page 1 above, and any subsequent owner(s) of the Property.

"OWRA" means the *Ontario Water Resources Act*, R.S.O. 1990, c. O.40, as amended.

“Professional Engineer” means a person who holds a licence, limited licence or temporary licence under the *Professional Engineers Act*, R.S.O. 1990, c. P. 28.

“Property” means the property that is the subject of the CPU and described in the “Site” section on page 1 above.

“Property Specific Contaminants of Concern” means one or more contaminants found on, in or under the Property at a concentration that exceeds the applicable site condition standards for the Property and any higher standards for the contaminant or contaminants as generated by the Approved Model without incorporation of risk management measures, and as specified in section 3 of the Risk Assessment.

“Property Specific Standards” means the property specific standards established for the Contaminants of Concern in the Risk Assessment number and in Item 3.2 of the CPU.

“Provincial Officer” means a person who is designated as a provincial officer for the purposes of the Act.

“Qualified Person” means a person who meets the qualifications prescribed in subsection 5 (2) of O. Reg. 153/04, namely a person who:

- a. Holds a licence, limited licence or temporary licence under the *Professional Engineers Act*, or
- b. Holds a certificate of registration under the *Professional Geoscientists Act*, 2000, and is a practising member, temporary member, or limited member of the Association of Professional Geoscientists of Ontario.

“Risk Assessment” means the Risk Assessment number **1186-11-01** accepted by the Director on May 24, 2019 and set out in the following documents:

- **“PSF for Water Lot at Corner of Water St and Bethune St, Brockville (Brockville Rowing Club)”, report by XCG Ltd, dated February 22, 2010**
- **“Risk Assessment and Risk Management Plan, Reynolds Park, 19,23 & 25 Water Street East, Brockville, Ontario”, report by XCG Consultants Ltd., dated May 12, 2014**
- **“Risk Assessment and Risk Management Plan, Reynolds Park, 19, 23 & 25 Water Street East, Brockville, Ontario”, report by XCG Consultants Ltd., dated February 1, 2016**
- **“Revised Risk Assessment Report and Risk Management Plan Reynolds Park, 19, 23, and 25 Water Street East, Brockville, ON”, report prepared by XCG Consultants Ltd., dated May 5, 2017**

- **“Risk Assessment and Risk Management Plan Reynolds Park 19, 23 & 25 Water Street East, Brockville, Ontario” report prepared by XCG Consultants Ltd., dated December 13, 2018**
- **“Revised Risk Assessment Report for 19, 23, & 25 Water Street East, Brockville, Ontario”, report prepared by XCG Consultants Ltd., dated January 10, 2020**
- **“RE: RA1093-10e; Reynolds Park, 19, 23 & 25 Water Street East, Brockville; IDS#3326-82WPTF”, email from Kevin Shipley, XCG Consulting Limited, received by TASDB on May 15, 2020, with following documents attached:**
  - RA117240601005Section 3.pdf
  - RA117240601005App A.pdf
  - RA117240601005Section 6.pdf
  - RA117240601004App E(track changes).pdf
- **“RE: RA1093-10e; Reynolds Park, 19, 23 & 25 Water Street East, Brockville; IDS#3326- 2WPTF”, email from Kevin Shipley, XCG Consulting Limited, received by TASDB on June 15, 2020, with following documents attached:**
  - RA117240601005Section 3.pdf
  - RA117240601005Section 6.pdf
  - RA117240601005App A.pdf
  - RA117240601004App E(track changes).pdf

"Risk Management Measures" means the risk management measures specific to the Property described in the Risk Assessment and/or Part 4 of the CPU.

“Shallow Soil Cap” means cover, above the Property Specific Contaminants of Concern, that is at least 0.5 metres thick, and consists of Capping Soil on top of a geotextile fabric layer.

“Tribunal” has the same meaning as in the Act; namely, the Environmental Review Tribunal.

## **Part 2: Legal Authority**

- 2.1 Section 19 of the Act states that a certificate of property use is binding on the executor, administrator, administrator with the will annexed, guardian of property or attorney for property of the person to whom it was directed, and on any other successor or assignee of the person to whom it was directed.
- 2.2 Subsection 132(1.1) of the Act states that the Director may include in a certificate of property use a requirement that the person to whom the certificate is issued provide financial assurance to the Crown in right of Ontario for any one or more of,

- a. the performance of any action specified in the certificate of property use;
  - b. the provision of alternate water supplies to replace those that the Director has reasonable and probable grounds to believe are or are likely to be contaminated or otherwise interfered with by a contaminant on, in or under the property to which the certificate of property use relates; and
  - c. measures appropriate to prevent adverse effects in respect of the property to which the certificate of property use relates.
- 2.3 Section 168.6 (1) of the Act states that if a risk assessment related to the property has been accepted under clause 168.5 (1) (a), the Director may issue a certificate of property use to the owner of the property, requiring the owner to do any of the following things:
- 1) Take any action that is specified in the certificate and that, in the Director's opinion, is necessary to prevent, eliminate or ameliorate any adverse effect that has been identified in the Risk Assessment, including installing any equipment, monitoring any contaminant or recording or reporting information for that purpose.
  - 2) Refrain from using the property for any use specified in the certificate or from constructing any building specified in the certificate on the property
- 2.4 Subsection 168.6(2) of the Act states that a certificate of property use shall not require an owner of property to take any action that would have the effect of reducing the concentration of a contaminant on, in or under the property to a level below the level that is required to meet the standards specified for the contaminant in the risk assessment.
- 2.5 Subsection 168.6(3) of the Act states that the Director may, on his or her own initiative or on application by the owner of the property in respect of which a certificate has been issued under subsection 168.6(1),
- a. alter any terms and conditions in the certificate or impose new terms and conditions; or
  - b. revoke the certificate.
- 2.6 Subsection 168.6(4) of the Act states that if a certificate of property use contains a provision requiring the owner of property to refrain from using the property for a specified use or from constructing a specified building on the property,
- a. the owner of the property shall ensure that a copy of the provision is given to every occupant of the property;
  - b. the provision applies, with necessary modifications, to every occupant of the property who receives a copy of the provision; and
  - c. the owner of the property shall ensure that every occupant of the property complies with the provision.
- 2.7 Subsection 197(1) of the Act states that a person who has authority under the Act to make an order or decision affecting real property also has authority to make an order requiring any person with an interest in the property, before dealing with the

- property in any way, to give a copy of the order or decision affecting the property to every person who will acquire an interest in the property as a result of the dealing.
- 2.8 Subsection 197(2) of the Act states that a certificate setting out a requirement imposed under subsection 197(1) may be registered in the proper land registry office on the title of the real property to which the requirement relates, if the certificate is in a form approved by the Minister, is signed or authorized by a person who has authority to make orders imposing requirements under subsection 197(1) and is accompanied by a registrable description of the property.
- 2.9 Subsection 197(3) of the Act states that a requirement, imposed under subsection 197(1) that is set out in a certificate registered under subsection 197(2) is, from the time of registration, deemed to be directed to each person who subsequently acquires an interest in the real property.
- 2.10 Subsection 197(4) of the Act states that a dealing with real property by a person who is subject to a requirement imposed under subsection 197(1) or 197(3) is voidable at the instance of a person who was not given the copy of the order or decision in accordance with the requirement.

### **Part 3: Background**

- 3.1 The Risk Assessment was undertaken for the Property on behalf of the Owner to assess the human health risks and ecological risks associated with the presence or discharge of Contaminants on, in or under the Property and to identify appropriate Risk Management Measures to be implemented to ensure that the Property is suitable for the intended use: "Parkland", as defined in O. Reg. 153/04.
- 3.2 The Contaminants on, in or under the Property that are present above the Residential/Parkland/Institutional Property Use Standards within Table 9 of the *Soil, Groundwater and Sediment Standards for Use under Part XV.1 of the Act published by the Ministry and dated April 15, 2011* for coarse textured soils or for which there are no such standards are defined as the Contaminants of Concern. The Property Specific Standards for the Contaminants of Concern are set out in Schedule "A" attached to and forming part of the CPU. Also attached to and forming part of the CPU is the following figures:
- Plan of Survey
- 3.3 I am of the opinion, for the reasons set out in the Risk Assessment that the Risk Management Measures described therein and outlined in Part 4 of the CPU are necessary to prevent, eliminate or ameliorate an Adverse Effect on the Property.
- 3.4 The Risk Assessment indicates the presence of Contaminants of Concern including: antimony; arsenic; barium; boron; chromium VI; cobalt; copper; lead;

mercury; molybdenum; selenium; silver; zinc; acenaphthene; acenaphthylene; anthracene, benzon(a)anthracene; benzo[a]pyrene; benz[b]fluoranthene; benzo[ghi]perylene; benzo[k]fluoranthene; chrysene; dibenzo[ah]anthracene; fluoranthene; fluorene; indeno[123-cd]pyrene; methyl naphthalene 2-(1-); naphthalene; phenanthrene; pyrene; biphenyl 1,1'-; toluene; and, petroleum - hydrocarbons F2 and F3 in soil which require on-going pathway elimination. As such, it is necessary to impose Risk Management Measures including: a requirement for barriers to prevent contact with soils; sub-slab ventilation for on-site buildings, a shoreline erosion protection system, a soil, water and sediment management plan; and, a health and safety plan for any Intrusive Activities as set out in the Risk Assessment and in Parts 4 and 5 of the CPU.

- 3.5 I am of the opinion, that the requirements set out in Part 6 of the CPU are necessary to supplement the Risk Management Measures described in the Risk Assessment in Part 4 of the CPU.
- 3.6 I believe for the reasons set out in the Risk Assessment that it is also advisable to require the disclosure of the CPU and registration of notice of the CPU on title to the Property as set out in the section 197 order requirements in Part 7 of the CPU.

#### **Part 4: CPU Risk Management Measures Relating to the Risk Assessment and the Property**

I hereby require the Owner to do or cause to be done the following under the authority of section 168.6(1) of the Act:

- 4.1 Implement, and thereafter maintain or cause to be maintained, the Risk Management Measures as set out in Items 4.2 to 4.9 below.
- 4.2 The Hard Cap or Shallow Cap barrier risk management measure is set out below:
- a. Covering of all areas of the Property where Property Specific Contaminants of Concern are present at or within 0.5 metres below the soil surface, with either a Shallow Soil Cap barrier or a Hard Cap barrier, so as to prevent exposure to the Property Specific Contaminants of Concern at the Property, in conjunction with any existing Barriers in any other areas of the Property where Property Specific Contaminants of Concern are present below the soil surface;
  - b. Before commencing development of all or any part of the Property, installing fencing and implementing dust control measures for any part of the Property requiring covering but which has not been covered, so as to restrict access to the part fenced and prevent exposure to the Property Specific Contaminants of Concern at the Property, with the fencing and dust control measures to be maintained until covering of the part fenced is complete;



- c. Preparing and implementing a written inspection and maintenance program, prepared by a Qualified Person and to be retained by the Owner, and be available for inspection upon request by a Provincial Officer, so as to ensure the continuing integrity of each Barrier at the Property so long as the Property Specific Contaminants of Concern are present at the Property, including, at a minimum:
  - i. procedures and timing for implementing the program;
  - ii. semi-annual inspections, in spring and fall, of the Barrier;
  - iii. noting any deficiencies in the Barrier observed during the inspections, or at any other time;
  - iv. repairing promptly any such deficiencies, to the original design specifications, with written confirmation by a Licenced Professional Engineer that the barrier has been properly repaired, to be retained by the Owner and be available for inspection upon request by a Provincial Officer;
  - v. contingency measures, such as fencing, to be implemented if cracks, breaches or any loss of integrity of the barrier cannot be repaired or addressed in a timely manner, to prevent exposure to the Property Specific Contaminants of Concern in that area of the Property; and
  - vi. recording, in writing, all inspections, deficiencies, repairs and implementation of contingency measures, to be retained by the Owner and be available for inspection upon request by a Provincial Officer;

and which is,

- vii. delivered to the Owner before residential use of all or any part of the Property begins, or within 90 days following completion of covering of all or any part of the Property, whichever is earlier; and
  - viii. updated and delivered to the Owner within 30 days following making any alteration to the program;
- d. Preparing a site plan of the entire Property, prepared by a Licenced Professional Engineer and to be retained by the Owner, and be available for inspection upon request by a Provincial Officer, showing the Property, any fencing, and the location, type and design of each barrier at the Property, including cross-sectional drawings of the barrier showing its design and vertical and lateral extent; and which is:
  - i. delivered to the Owner before residential use of all or any part of the Property begins, or within 90 days following completion of covering of all or any part of the Property, whichever is earlier; and
  - ii. updated and delivered to the Owner within 30 days following making any alteration to the location, design or extent of the barrier, or other relevant feature shown on the site plan; and
- e. Preparing and implementing written procedures, prepared by Qualified Person and to be retained by the Owner, and be available for inspection upon request by a Provincial Officer, for written and oral communication to all persons who may be involved in Intrusive Activities at the Property that may disturb a Barrier at the

Property, so as to ensure the persons are made aware of the presence and significance of the Barrier and the Property Specific Contaminants of Concern at the Property and the precautions to be taken to ensure the continued integrity of the barrier when undertaking the Intrusive Activities, and if damaged, to ensure that the barrier is repaired promptly to the original design specifications, or, if it cannot be repaired promptly, to ensure that the contingency measures are implemented, and records kept, as specified in the inspection and maintenance program; and which are,

- i. delivered to the Owner before any Intrusive Activities are undertaken at the Property; and
- ii. updated and delivered to the Owner within 30 days following making any alteration to the procedures.

- 4.3 Not constructing any Building on the Property unless the Building is constructed as slab-on-grade and includes a Passive SVIMS, and the Passive SVIMS meets the following requirements:

#### **DESIGN, INSTALLATION AND OPERATION**

- a. Designing, installing and operating a Passive SVIMS for the Building, designed by a Licenced Professional Engineer in consultation with a Qualified Person and installed by a person acceptable to and under the supervision of a Licenced Professional Engineer, so as to remove soil vapour from below the Building and prevent soil vapour containing the Property Specific Contaminants of Concern from entering the Building air, including the following requirements and components for the Passive SVIMS:

#### **SYSTEM REQUIREMENTS**

- i. the Passive SVIMS is to:
  - (a) be designed, installed and operated with the objective of achieving during all seasons a lower air pressure differential below the foundation floor slab, relative to the indoor air pressure within the Building, across at least 90% of the Building Area;
  - (b) be able to be readily converted to operation as an Active SVIMS, if necessary, to ensure soil vapour is being sufficiently removed from below the Building, including making provision to readily allow installation and operation of an electrical powered fan on each vent riser, with the objective of achieving during all seasons at least a 6 Pascal lower air pressure differential below the foundation floor slab, relative to the indoor air pressure within the Building, across at least 90% of the Building Area, and making provision for an automated monitoring system of electrical fan operation which remotely detects and indicates system malfunctions; and
  - (c) have in place or be able to easily put in place, measures, as appropriate based on an assessment carried out in accordance with ASTM E1998, to prevent potential depressurization induced back

drafting and spillage of combustion products from vented combustion appliances that may be in the Building, in the event conversion to operation as an Active SVIMS is necessary;

#### SUB-SLAB FOUNDATION LAYER

- ii. throughout the Building Area below the foundation floor slab, a sub-slab foundation layer, above soil containing the Property Specific Contaminants of Concern, designed by a Licenced Professional Engineer for the Building constructor in consultation with the Licenced Professional Engineer for the Passive SVIMS;

#### SOIL VAPOUR VENTING LAYER

- iii. throughout the Building Area below the foundation floor slab and above the sub-slab foundation layer, a soil vapour venting layer designed for collection and venting of soil vapour from below the floor slab to vent risers for venting to the outdoor air, with the soil vapour venting layer consisting of:
  - (a) perforated collection pipes or geocomposite strips of sufficient size or diameter, frequency and locations to promote efficient collection and venting, embedded in granular materials of sufficient air permeability and depth;  
or,  
other soil vapour collection and venting products used to construct a soil vapour venting layer with continuous open void space, such as an aerated sub-floor below the floor slab and around the exterior walls, which provides similar or greater air permeability and, collection and venting efficiency;
  - (b) for a Building with isolated soil vapour venting layer areas caused by interior grade beams or areas of thickened slabs, ventilation pipes to connect the isolated areas or a soil vapour venting layer that extends below these elements of the Building foundation; and,
  - (c) clean-outs, drains or openings to ensure drainage and removal of condensate or water, including any entrained dust, that may enter collection pipes, geocomposite strips or vent risers, and, if required, to ensure drainage or dewatering of the soil vapour venting layer in Property areas with a shallow ground water table;

#### SOIL VAPOUR BARRIER MEMBRANE

- iv. throughout the Building Area, a continuous leak free soil vapour barrier membrane, such as a sheet geomembrane or spray applied membrane, below the foundation floor slab and above the soil vapour venting layer, and below and along the walls of any subsurface structures such as a sump, and, which is of appropriate thickness and meets the appropriate gas permeability and chemical resistance specifications to be considered

substantially impermeable to the soil vapour, in accordance with the appropriate ASTM standards such as D412 and D543, as applicable; and,

- (b) has a suitable protective geotextile, or other suitable protective material, such as a sand layer, immediately below or above the soil vapour barrier membrane, as considered appropriate by the Licenced Professional Engineer;

#### VENT RISERS

- v. vent risers of sufficient size or diameter, frequency and locations to promote efficient venting and that terminate above the roof of the Building, to convey soil vapour from the soil vapour venting layer to the outdoor air above the roof of the Building and that discharge at an appropriate distance, consistent with the separation provisions in ASTM E2121 but modified as appropriate for the characteristics of the soil vapour and Building, from Building air intakes and openable windows, doors and other openings through which exhausted vapours could be entrained in Building air, including:
  - (a) at least one vent riser per isolated section of the soil vapour venting layer caused by interior grade beams or thickened slabs, unless analysis or testing indicates a lesser number of vent risers is required;
  - (b) vent pipe riser diameter that is greater than the collection pipe diameter, to promote efficient venting;
  - (c) vent risers located within the Building, where appropriate, to promote temperature induced convective venting during colder weather; and
  - (d) a wind turbine or solar powered wind turbine on each vent riser;

4.4 A soil, water and sediment management plan shall be prepared before any Intrusive Activities are undertaken at the Property and implemented during any activities that may disturb contaminated soil and/or result in the collection of groundwater or stormwater in an open excavation or other area of exposed soil on the Property. A copy of the plan shall be kept by the Owner and made available for review by a Provincial Officer upon request. Implementation of the plan shall be overseen by a Qualified Person and shall include, but not be limited to, provisions for soil and water management and record keeping specified below:

- a. Dust control measures and prevention of soil tracking by vehicles and personnel from the Property, which may include wetting of soil with potable water, reduced speeds for on-site vehicles, tire washing stations and restricting working in high wind conditions, as required;
- b. Management of excavated materials which may include cleaning equipment, placement of materials for stockpiling on designated areas lined and covered with polyethylene sheeting, bermed and fenced to prevent access, runoff control to minimize contact and provisions for discharge to sanitary sewers or other approved treatment, as required;

- c. Characterization of excavated soils to determine if soils exceed the Property Specific Standards shall follow the sampling strategy in the Risk Assessment. Excavated soils and materials requiring off-site disposal as a waste shall be disposed of in accordance with the provisions of O. Reg. 347/90, as amended, made under the Act;
- d. Procedures for managing surface water runoff and any surface water that collects in open excavations;
- e. Procedures for minimizing disturbances to the soil along the shoreline and adjacent off-site sediment during construction of the shoreline barrier system;
- f. Record keeping including dates and duration of work, weather and site conditions, location and depth of excavation activities, dust control measures, stockpile management and drainage, soil characterization results, names of the Qualified Person, contractors, haulers and receiving sites for any soil or contaminated ground water removed from the Property and any complaints received relating to site activities potentially coming in contact with or exposing site soils and ground water.

4.5 A site specific health and safety plan shall be developed before any Intrusive Activities are undertaken at the Property and implemented during all intrusive, below-grade construction activities potentially coming in contact with or exposing site soil or ground water and a copy shall be maintained on the Property for the duration of these intrusive activities. The Owner shall ensure that the health and safety plan takes into account the presence of the Contaminants of Concern and is implemented prior to any intrusive work being done on the Property in order to protect workers from exposure to the Contaminants of Concern. The health and safety plan shall be prepared in accordance with applicable Ministry of Labour health and safety regulations, shall address any potential risks identified in the Risk Assessment, and shall include, but not be limited to, occupational hygiene requirements, requirements for personal protective equipment, and contingency plan requirements including site contact information. Prior to initiation of any project (as defined in the Occupational Health and Safety Act, as amended) on the Property, the local Ministry of Labour office shall be notified of the proposed activities and that the Property contains contaminated soil and ground water. Implementation of the health and safety plan shall be overseen by persons qualified to review the provisions of the plan with respect to the proposed site work and conduct daily inspections. The Owner shall retain a copy of the plan, which shall be made available for review by the Ministry upon request.

4.6 The existing shoreline retaining wall system shall be maintained. An annual inspection shall be made to assess the structural condition and suitability of the existing shoreline retaining wall to prevent soil on the Property from coming into contact with surface water. Any recommended upgrades or repairs for the retaining wall system shall be reviewed by a QP<sub>RA</sub> to ensure that it meets the requirements of the Risk Management Plan as set out in Section 7 of the Risk Assessment.

4.7 Any deep rooted plants that are planted within the area of the Shallow Soil Cap barrier shall be installed with a minimum thickness of 1.0 metre of clean planting

medium around the root ball. On-site soils shall not be used for growing produce for human consumption.

- 4.8 The Owner shall retain a copy of the site plan prepared and signed by a Qualified Person prior to residential occupancy which will describe the Property, placement and quality of all of the shoreline and surface barrier systems. The site plan will include a plan and cross section drawings specifying the vertical and lateral extent of the barriers. This site plan shall be retained by the Owner for inspection upon request by a Provincial Officer. The site plan shall be revised following the completion of any alteration to the extent of the barriers to site soils and shoreline.
- 4.9 Beginning the year following the start of development construction, the Owner shall prepare by March 31, an annual report documenting activities relating to the Risk Management Measures undertaken during the previous calendar year. A copy of this report shall be maintained on file by the Owner and shall be made available upon request by a Provincial Officer. The report shall include, but not be limited to, the following minimum information requirements:
- a. a copy of all records relating to the inspection and maintenance program for the barrier to site soils;
  - b. a copy of all records relating to the soil, water and sediment management plan and to the health and safety plan;
  - c. a copy of all signed site plans including any alterations for barriers to site soils.

## **Part 5: CPU Restrictions on Property Use, Building Construction and Notice Requirements**

I hereby require the Owner to do or cause to be done the following under the authority of paragraph 168.6(1)2 of the Act:

### Property Use Restrictions

- 5.1 Refrain from using the Property for any of the following use(s): all property uses, except for mixed "parkland use" as defined in O. Reg 153/04.

### Building Construction Restrictions

- 5.2 Refrain from constructing the following building(s): Any new building that is not slab-on-grade and which does not comply with Item 4.3 of the CPU.

### Notice of Restrictions

- 5.3 Pursuant to subsection 168.6(4) of the Act, the Owner shall ensure that every occupant of the Property is given notice that the Ministry has issued this CPU and that it contains the provisions noted above in Items 5.1 and 5.2. For the purposes of this requirement, an occupant means any person with whom the Owner has a contractual relationship regarding the occupancy of all or part of the Property.

## **Part 6: Additional Requirements**

I hereby require the Owner to do or cause to be done the following things under the authority of subsection 168.6(1) of the Act:

### Site Changes Affecting Risk Management Measures

- 6.1 In the event of a change in the physical site conditions or receptor characteristics at the Property that may affect the Risk Management Measures and/or any underlying basis for the Risk Management Measures, the Owner shall forthwith notify the Director of such changes and the steps taken or proposed, to implement, maintain and operate any further Risk Management Measures as are necessary to prevent, eliminate or ameliorate any Adverse Effect that will result from the presence on, in or under the Property of any Contaminant of Concern or the discharge of any Contaminant of Concern into the natural environment from the Property. In support of this work, the Director may require a new risk assessment be completed in accordance with O. Reg. 153/04 and submitted to the Ministry for acceptance if the change in the physical site conditions or receptor characteristics is such that it is not contemplated by the existing Risk Assessment or cannot be adequately managed by the Risk Management Measures. An amendment to the CPU will be issued to address the changes set out in the notice received and any further changes that the Director considers necessary in the circumstances.

### Report Retention Requirements

- 6.2 The Owner shall retain a copy of any reports required under the CPU for a period of seven (7) years from the date the report is created and within ten (10) days of the Director or a Provincial Officer making a request for a report, provide a copy to the requesting Director or Provincial Officer.

### Owner Change Notification

- 6.3 While the CPU is in effect, the Owner shall, forthwith report in writing to the Director any changes of ownership of the Property except that while the Property is registered under the Condominium Act, 1998, S.O. 1998 c.19, as amended, no notice shall be given of changes in the ownership of individual condominium units or any appurtenant common elements on the Property.

### Financial Assurance

- 6.4 The Director has not included in the CPU a requirement that the Owner provide financial assurance to the Crown in right of Ontario.

## **Part 7: Section 197 Order – Property Notice and Certificate of Requirement Registration**

I hereby order the Owner to do or cause to be done the following under the authority of subsections 197(1) and (2) of the Act:

#### Property Notice Requirement

- 7.1 I hereby order the Owner and any other person with an interest in the Property, before dealing with the Property in any way, to give a copy of the CPU, including any amendments thereto, to every person who will acquire an interest in the Property as a result of the dealing with the Property.

#### Certificate of Requirement Registration

- 7.2 Within fifteen (15) days of receipt of a certificate of requirement, issued under subsection 197 (2) of the Act completed as outlined in Schedule "B", register the certificate of requirement on the title to the Property in the appropriate land registry office.

#### Verification

- 7.3 Within five (5) days after registering of the certificate of requirement, provide to the Director a copy of the registered certificate and of the parcel register(s) for the Property confirming that registration has been completed.

### **Part 8: General Requirements**

- 8.1 The requirements of the CPU are severable. If any requirement of the CPU or the application of any requirement to any circumstance is held invalid, the application of such requirement to other circumstances and the remainder of the CPU shall not be affected thereby.
- 8.2 An application under sub section 168.6(3) of the Act to,
- a) alter any terms and conditions in the CPU or impose new terms and conditions; or
  - b) revoke the CPU;
- shall be made in writing to the Director, with reasons for the request.
- 8.3 The Director may alter the CPU under subsections 132(2) or (3) of the Act to change a requirement as to financial assurance, including that the financial assurance may be increased or reduced or released in stages. The total financial assurance required may be reduced from time to time or released by an order issued by the Director under section 134 of the Act upon request and submission of such supporting documentation as required by the Director.
- 8.4 Subsection 186(3) of the Act provides that non-compliance with the requirements of the CPU constitutes an offence.
- 8.5 The requirements of the CPU are minimum requirements only and do not relieve the Owner from,



- a. complying with any other applicable order, statute, regulation, municipal, provincial or federal law; or
  - b. obtaining any approvals or consents not specified in the CPU.
- 8.6 Notwithstanding the issuance of the CPU, further requirements may be imposed in accordance with legislation as circumstances require. The Director shall also alter the CPU where the approval or acceptance of the Director is required in respect of a matter under the CPU and the Director either does not grant the approval or acceptance or does not grant it in a manner agreed to by the Owner.
- 8.7 In the event that, any person is, in the opinion of the Director, rendered unable to comply with any requirements in the CPU because of,
- a. natural phenomena of an inevitable or irresistible nature, or insurrections,
  - b. strikes, lockouts or other labour disturbances,
  - c. inability to obtain materials or equipment for reasons beyond your control, or
  - d. any other cause whether similar to or different from the foregoing beyond your control,

the requirements shall be adjusted in a manner defined by the Director. To obtain such an adjustment, the Director must be notified immediately of any of the above occurrences, providing details that demonstrate that no practical alternatives are feasible in order to meet the requirements in question.

- 8.8 Failure to comply with a requirement of the CPU by the date specified does not absolve the Owner from compliance with the requirement. The obligation to complete the requirement shall continue each day thereafter.
- 8.9 The Risk Management Measures identified in the Risk Assessment and also in Part 4 of the CPU and other requirements of the CPU shall commence upon the issuance of the CPU and continue in full force and effect until such time as the Director alters or revokes the CPU.
- 8.10 The provisions of the CPU shall take precedence in the event of a conflict between the provisions of the CPU and the Risk Assessment.
- 8.11 In the event that the Owner complies with the provisions of Items 7.2 and 7.3 of the CPU regarding the registration of the certificate of requirement on title to the Property, and then creates a condominium corporation by the registration of a declaration and description with respect to the Property pursuant to the Condominium Act, 1998, S.O. 1998, c.19, as amended, and then transfers ownership of the Property to various condominium unit owners, the ongoing obligations of the Owner under this CPU can be carried out by the condominium corporation on behalf of the new Owners of the Property.

## **Part 9: Hearing before the Environmental Review Tribunal**

- 9.1 Pursuant to section 139 of the Act, you may require a hearing before the Environmental Review Tribunal (the "Tribunal"), if within fifteen (15) days after

service on you of a copy of the CPU, you serve written notice upon the Director and the Tribunal.

- 9.2 Pursuant to section 142 of the Act, the notice requiring the hearing must include a statement of the portions of the CPU and the grounds on which you intend to rely at the hearing. Except by leave of the Tribunal, you are not entitled to appeal a portion of the CPU, or to rely on a ground, that is not stated in the notice requiring the hearing.
- 9.3 Service of a notice requiring a hearing must be carried out in a manner set out in section 182 of the Act and Ontario Regulation 227/07: *Service of Documents*, made under the Act as they may be amended from time to time. The address, email address and fax numbers of the Director and the Tribunal are:

The Secretary  
Environmental Review  
Tribunal 655 Bay Street, Suite  
1500 Toronto, ON, M5G 1E5  
Fax: (416) 326-5370  
Email: [ERTTribunalSecretary@ontario.ca](mailto:ERTTribunalSecretary@ontario.ca)

and

Trevor Dagilis  
Ministry of the Environment, Conservation and Parks  
Kingston District Office  
1259 Gardiners Road, Unit 3  
Kingston, ON K7P 3J6  
Fax: 613-548-6920  
Email: [trevor.dagilis@ontario.ca](mailto:trevor.dagilis@ontario.ca)

- 9.4 Unless stayed by application to the Tribunal under section 143 of the Act, the CPU is effective from the date of issue.
- 9.5 If you commence an appeal before the Tribunal, under section 47 of the Environmental Bill of Rights, 1993 (the “EBR”), you must give notice to the public in the EBR registry. The notice must include a brief description of the CPU (sufficient to identify it) and a brief description of the grounds of appeal. The notice must be delivered to the Minister of the Environment, Conservation and Parks who will place it on the EBR registry. The notice must be delivered to the Minister of the Ministry of the Environment, Conservation and Parks, College Park 5th Flr, 777 Bay St, Toronto, ON M7A 2J3 by the earlier of:
- (a) two (2) days after the day on which the appeal before the Tribunal was commenced; and
  - (b) fifteen (15) days after service on you of a copy of the CPU.

- 9.6 Pursuant to subsection 47(7) of the EBR, the Tribunal may permit any person to participate in the appeal, as a party or otherwise, in order to provide fair and adequate representation of the private and public interests, including governmental interests, involved in the appeal.
- 9.7 For your information, under section 38 of the EBR, any person resident in Ontario with an interest in the CPU may seek leave to appeal the CPU. Under section 40 of the EBR, the application for leave to appeal must be made to the Tribunal by the earlier of:
- (a) fifteen (15) days after the day on which notice of the issuance of the CPU is given in the EBR registry; and
  - (b) if you appeal, fifteen (15) days after the day on which your notice of appeal is given in the EBR registry.

Further information on the Environmental Review Tribunal requirements for an appeal can be obtained directly from the Tribunal at:

Tel: (416) 212- 6349 Fax: (416) 326-5370 [www.ert.gov.on.ca](http://www.ert.gov.on.ca)

Issued at Kingston this 31<sup>th</sup> day of July, 2020.

Trevor Dagilis  
Director, section 168.6 of the Act

## Schedule 'A'

### Property Specific Standards for each Contaminant of Concern

Contaminants of Concern (COC)	Property Specific Standards Soil ( $\mu\text{g/g}$ )
Antimony	15.2
Arsenic	216
Barium	566
Boron	36
Boron (HWS)	2.16
Chromium VI	0.8
Cobalt	34.8
Copper	168
Lead	1040
Mercury	1.69
Molybdenum	7.2
Silver	6.0
Selenium	14.4
Zinc	750
PHC F2	434.4
PHC F3	396
Acenaphthene	7.3
Acenaphthylene	0.36

Contaminants of Concern (COC)	Property Specific Standards Soil (µg/g)
Anthracene	15.6
Benzo(a)anthracene	16.8
Benzo[a]pyrene	18
Benzo[b]fluoranthene	19.2
Benzo[ghi]perylene	3.5
Benzo[k]fluoranthene	19.2
Chrysene	11.3
Dibenzo[a h]anthracene	4.0
Fluoranthene	33.6
Fluorene	11.6
Indeno[1 2 3-cd]pyrene	7.0
Methylnaphthalene 2-(1-)	9.2
Naphthalene	4.6
Phenanthrene	45.6
Pyrene	27.6
Biphenyl 1,1'-	0.59
Toluene	1.2

**SCHEDULE 'B'**

**CERTIFICATE OF REQUIREMENT**

**s.197 (2)**

**Environmental Protection Act**

This is to certify that pursuant to item 7.2 Certificate of Property Use Number RA1093-10-01 issued by Trevor Dagilis, Director of the Ministry of the Environment, Conservation and Parks, dated July 31, 2020, under sections 168.6 and 197 of the Environmental Protection Act, being a Certificate of Property Use and order under subsection 197(1) relating to the property municipally known as Reynolds Park, Brockville, Ontario, being all of Property Identifier Number (PIN) 44162-0061 (the "property") with respect to a Risk Assessment and certain Risk Management Measures and other preventive measure requirements on the property

**The Corporation of the City of Brockville**

and any other persons having an interest in the property are required before dealing with the property in any way, to give a copy of the Certificate of Property Use, including any amendments thereto, to every person who will acquire an interest in the property as a result of the dealing.

Under subsection 197(3) of the Environmental Protection Act, the requirement applies to each person who, subsequent to the registration of the certificate, acquires an interest in the real property.

**Figure 1: Plan of Survey**