

# Certificate of Property Use

Issued under the authority of the *Environmental Protection Act*, R.S.O. 1990, c.  
E.19, sections 168.6 (CPU) and 197 (Order)

Certificate of Property use number: 7688-BSLNSF03  
Risk Assessment number: 6644-7TYQPT

Owner: Municipality of Central Elgin  
450 Sunset Drive  
St. Thomas, Ontario N5R 5V1

Site: Port Stanley Harbour Lands – East Pier South

with a legal description as follows:

- Part of property identification number (PIN) 35253-0218 (LT), Part of the Bed of Kettle Creek and Part of the Bed of Lake Erie, lots 18, 19, 20, w/s Main St Plan 49, lots a, 1, 2, 3, 4 & 5 e/s Main St, Part of Lot 6 e/s Main St Plan 49, Part of Lot 1 Con 1 Yarmouth, part Water St, & George St, Plan 49, closed by ps4666 and ps4665, Part of Lots 1, 2, 3, 4, 5 w/s Water St, lots 4, 5s/s George St, lots 4, 5 n/s Smith St Plan 49 Part of Lot 1 Con 1 Yarmouth lying n of Smith St Plan 49, Part of Lots 23, 24, 25, e/s Beach St Plan 49, part lot 1 Con 1 Yarmouth lying s of Smith St Plan 49, Part of Lot y Plan 49, Part of the Bed of Kettle Creek west of lot y west of main street Plan 49, designated as parts 1 & 5, 11r8330, part 1, 11r625, part 2, 11r9271, parts 5 & 6, 11r8076 and part 2, 11r7413; t/w easements as in e161986, ps7812, e114964, ps7608, e255785, ps7853, ps7611, ps7681, ps7607, ps7689, e108619; s/t & t/w e444600; s/t e444601; Municipality of Central Elgin, being identified as property 4 on Plan of survey by Holstead & Redmond Ltd., dated December 17, 2010.

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

## Part 1: Interpretation

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

“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.

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

“Applicable Site Condition Standards” means the soil and groundwater criteria for coarse textured soils on industrial/commercial/community property use from the lower of the **Table 7 or 9 SCS** of the “*Soil, Ground Water and Sediment Standards for Use under Part XV.1 of the Environmental Protection Act*” published by the Ministry and dated April 15, 2011.

“Building” means an enclosed structure occupying an area greater than ten square metres consisting of a wall or walls, roof and floor.

“Building Code” means the Ontario Regulation 332/12; ‘Building Code’ as amended January 1, 2020.

“Competent Person” has the same meaning as set out 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 section 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 **7688-BSLNSF03**.

“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.

“First Storey” has the same meaning as in the Building Code.

“Grade” has the same meaning as in the Building Code.

“Licensed 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 and who has obtained the appropriate education and training and has demonstrated experience and expertise in the areas related to the work required to be carried out in this CPU.

“Ministry” means the ministry of the government of Ontario responsible for the administration of the Act, currently named the 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.

"O. Reg. 347/90 means Ontario means R.R.O. 1990, Regulation 347 General - Waste Management" as amended, made under the Act.

"OHSA" means the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1.

"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.

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

"Property Specific Standards" or "PSS" means the property specific standards established for the Contaminants of Concern set out in the Risk Assessment and in section 3.2 of the CPU and are the same standards specified in the Risk Assessment.

"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 license, limited license or temporary license under the *Professional Engineer Act*, or
- b. Holds a certificate of registration under the *Professional Geoscientists Act, 2000*, and is a practicing member, temporary member, or limited member of the Association of Professional Geoscientists of Ontario.

"Risk Assessment" and "RA" means the Risk Assessment number 6644-7TYQPT accepted by the Director on September 1, 2020 and set out in the following documents:

- *Risk Assessment Pre-Submission Form, Port Stanley Harbour, Port Stanley, Ontario*, prepared by CH2MHill, dated July 13, 2009
- *Risk Assessment and Risk Management Plan, Port Stanley Harbour, Port Stanley, Ontario*, prepared by CH2MHill, dated December 2010
- *Revised Risk Assessment and Risk Management Plan for Port Stanley Harbour, Port Stanley, Ontario*, prepared by Decommissioning Consulting Services, dated March 2014 (Volume I: Text and Appendices; Volume II: Tables, Figures and Drawings)
- *Revised Risk Assessment and Risk Management Plan for Port Stanley Harbour, Port Stanley, Ontario*, prepared by Arcadis Canada Inc., dated June 2015 (Volume I: Text and Appendices; Volume II: Tables, Figures and Drawings)
- *Revised Risk Assessment and Risk Management Plan for Port Stanley Harbour, Port Stanley, Ontario*, prepared by Arcadis Canada Inc., dated November 18, 2016 (Volume I: Text and Appendices, Volume II: Tables and Figures and Volume III: Drawings)
- *Revised Risk Assessment and Risk Management Plan for Port Stanley Harbour, Port Stanley, Ontario*, prepared by Arcadis Canada Inc., dated November 2017
- *Revised Risk Assessment Report for Port Stanley Harbour, Port Stanley, Ontario*, prepared by Arcadis Canada Inc., dated November 30, 2018 (Volume1 – RA Text and Appendices)
- *Appendix G: Revised Risk Assessment Report for Port Stanley Harbour, Port Stanley, Ontario*, prepared by Arcadis Canada Inc., dated January 24, 2019

- *Revised Risk Assessment and Risk Management Plan for Port Stanley Harbour, Port Stanley, Ontario, (Volumes 1-5)*, prepared by Arcadis Canada Inc., dated October 11, 2019
- "RE: Reference Number 6644-7TYQPT Port Stanley Risk Assessment – Figures" e-mail from Jennifer Kirk, Arcadis Canada Inc., e-mail received by TASDB on December 2, 2019, with the following attachment:
  - 351654 Fnl-EPN-CSM\_Sept 2019.pdf
- "RE: Reference Number 6644-7TYQPT Port Stanley Risk Assessment – Figures" e-mail from Jennifer Kirk, Arcadis Canada Inc., e-mail received by TASDB on December 2, 2019, with the following attachment:
  - 351654 Fnl-EHL-CSM\_Sept 2019.pdf
- "RE: Reference Number 6644-7TYQPT Port Stanley Risk Assessment – Figures" e-mail from Jennifer Kirk, Arcadis Canada Inc., e-mail received by TASDB on December 2, 2019, with the following attachment:
  - 351654 Fnl-EPS-CSM\_Sept 2019.pdf
- "RE: Reference Number 6644-7TYQPT Port Stanley Risk Assessment – Figures" e-mail from Jennifer Kirk, Arcadis Canada Inc., e-mail received by TASDB on December 2, 2019, with the following attachment:
  - 351654 Fnl-WP-CSM\_Sept 2019.pdf
- "RE: Risk Assessment for Port Stanley Harbour, Port Stanley; RA1064-09e; IDS#6644-7TYQPT" e-mail from Jennifer Kirk, Arcadis Canada Inc., e-mail received by Todd Fleet, P.Eng., MECP, on May 26, 2020, with the following attachment:
  - 351654-005 Ph II ESA-2018-Rev May 2020-WP\_Post Remediation-sections-Fnl-10A-INORG
- "RE: Risk Assessment for Port Stanley Harbour, Port Stanley; RA1064-09e; IDS#6644-7TYQPT" e-mail from Jennifer Kirk, Arcadis Canada Inc., e-mail received by Todd Fleet, P.Eng., MECP, on May 26, 2020, with the following attachment:
  - 351654-005 Ph II ESA-2018-Rev May 2020-WP-Post Remediation-Fnl-10 Soil-Inorg
- "RE: Risk Assessment for Port Stanley Harbour, Port Stanley; RA1064-09e; IDS#6644-7TYQPT" e-mail from Inge van Kemenade, Arcadis Canada Inc., e-mail received by Todd Fleet, P.Eng., MECP, on July 24, 2020, with information related to drawings numbered ELH-15 and ELH-15b

"Risk Management Measures" and "RMMs" means the risk management measures specific to the Property described in the Risk Assessment and Part 4 of the CPU. In the event of a conflict between the requirements in Part 4 of the CPU and the Risk Assessment, the conditions of the CPU take precedence.

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

"Vapour Barrier" means a geo-synthetic barrier (including but not limited to geomembrane or spray applied equivalent) meeting the appropriate gas permeability and chemical resistance specifications to be considered impermeable and resistant to the Contaminants of Concern and methane as well as waterproof as per Risk Assessment and is considered appropriate by the Licenced Professional Engineer and Qualified Person for its application.

"Venting Components" means a network of drainage panels embedded in granular materials of sufficient permeability or other venting products with continuous formed void space that conveys vapours passively above Grade to the atmosphere and is protected from water infiltration.

## 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: "industrial/commercial/community", as defined in O. Reg. 153/04.
- 3.2 The Contaminants on, in or under the Property that are present above the Industrial/Commercial/Community Property Use Standards within the lower of the **Table 7 or 9 SCS** of the "*Soil, Ground Water and Sediment Standards for Use under Part XV.1 of the Environmental Protection 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' and the surface water monitoring analytical parameters are set out in Schedule 'B' attached to and forming part of the CPU with the following Figures:
- Plan of Survey with the Property outlined in red; and
  - Figures 1 and 2, and Figure 700743-080-7-EPS-1.
- 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 in soil which require on-going restriction of land use and pathway elimination. As such, it is necessary to restrict the use of the Property and implement Risk Management Measures as set out in the Risk Assessment and in Part 4 of the CPU.

#### Part 4: Director Requirements

Pursuant to the authority vested in me under subsection 168.6(1) and section 197 of the Act, I hereby require the Owner to do or cause to be done the following:

#### Risk Management Measures

4.1 Implement, and thereafter maintain or cause to be maintained, the Risk Management Measures.

4.2 Without restricting the generality of the foregoing in Item 4.1, carry out or cause to be carried out the following key elements of the Risk Management Measures:

#### Hard cap and fill cap barriers:

a) Hard Cap Barrier or Fill Cap Barrier Risk Management Measure:

- i. The areas of the property designated as RMM-2 on Figure 700743-080-7-EPS-1 shall be covered by a barrier to site soils designed, installed and maintained in accordance with the Risk Assessment, including section 7.4.2 of the RA, so as to prevent exposure to the Contaminants of Concern and to serve as an erosion control measure. The barrier to site soils shall consist of a hard cap, fill/soil cap and/or fence as specified below:
  - i. Hard caps on the Property shall consist of asphalt or concrete underlain by granular fill to a minimum depth of 225 mm (as illustrated by Figure 1 of the CPU).
  - ii. Fill caps on the Property shall consist of aggregate or soil meeting the Industrial/Commercial/Community Property Use Standards within the lower of the **Table 7** or **Table 9 SCS** of the **Soil, Ground Water and Sediment Standards for Use under Part XV.1 of the Act** for coarse textured soils published by the Ministry and dated April 15, 2011 to a minimum depth of 0.5 m (as illustrated by Figure 1 of the CPU). If new shrubs or trees are to be planted in the area of the fill cap then the fill cap shall have a minimum depth of 1.0 m.
  - iii. For portion(s) of the Property, where intrusive work is being undertaken that may disturb the hard cap or fill cap barriers, these areas shall have a fence barrier to prevent the general public from accessing the area of disruption to the hard cap or fill cap barriers and a dust control plan shall be implemented to prevent surface soil from impacting the adjacent properties.
- ii. An inspection and maintenance program shall be prepared and implemented, as detailed in section 7.6.2 of the RA, to ensure the continuing integrity of the barriers to site soils risk management measures and any fence barriers as long as the Contaminants of Concern are present on the Property. The inspection program shall include, at a minimum, semi-annual (every six months) inspections of the barrier to site soils integrity. Any barrier to site soils deficiencies shall be repaired forthwith. Inspection, deficiencies and repairs shall be recorded in a log book maintained by the Owner and made available upon request by a Provincial Officer.
- iii. The Owner shall retain a copy of the site plan prepared and signed by a Qualified Person which will describe the Property, placement and quality of all the barriers to site soils. The site plan shall include a plan and cross section drawings specifying the vertical and lateral

extent of the barriers to site soils. 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.

**Soil and Groundwater Management Plan:**

- b) A Property-specific soil and groundwater management plan (the "Soil and Groundwater Management Plan") shall be developed for the Property and implemented during all intrusive activities potentially in contact with or exposing COCs in soil or groundwater that exceed the Applicable Site Conditions Standards on the Property. A copy of the Soil and Groundwater Management Plan shall be maintained on the Property for the duration of all planned intrusive activities. Any short term intrusive activities required for the purposes of emergency repairs (i.e. for repairs to underground utilities etc.) will not require the submission of the Soil and Groundwater Management Plan to the Director prior to undertaking the short term emergency repairs. For planned intrusive activities, this Soil and Groundwater Management Plan shall be submitted to the Director by the Owner at least 14 calendar days prior to any such intrusive activities being undertaken and shall be consistent with the measures specified in Section 7.4.1.2 of the RA. Implementation of the plan shall be overseen by a Qualified Person and shall include, but not be limited to, provisions for soils excavation, stockpiling, characterization, disposal and record keeping specified below:
- i. 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;
  - ii. 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 controls including silt fences and filter socks on catch basins and utility covers to minimize contact and provisions for discharge to sanitary sewers or other approved treatment, as required;
  - iii. Characterization of excavated soils to determine if soils exceed the Property Specific Standards shall follow the soil 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. Excavated soils meeting the Property Specific Standards may be placed on-site below the barrier to site soils and is considered appropriate by the Qualified Person and in accordance with the Risk Assessment;
  - iv. Soils brought to the Property shall follow the soil sampling strategy in the Risk Assessment and only soils meeting the Industrial/Commercial/Community Property Use Standards within the lower of the **Table 7 or Table 9** of the **Soil, Ground Water and Sediment Standards for Use under Part XV.1 of the Act** for coarse textured soils published by the Ministry and dated April 15, 2011 is to be placed on, in or under the Property; and
  - v. Record keeping including dates and duration of work, weather and site conditions, location and depth of excavation activities, dust and odour control measures, stockpile management and drainage, soil characterization results, names of the Qualified Person, contractors, haulers and receiving sites for any soil or groundwater removed from the Property and any complaints received relating to site activities potentially coming in contact with or exposing site soils and ground water.



- c) A copy of the Soil and Groundwater Management Plan and any amendments and the records kept thereunder shall be made available for review by a Provincial Officer upon request.

**Health and Safety Plan:**

- d) A Property-specific health and safety plan (the "Health and Safety Plan") shall be developed for the Property and implemented during all planned intrusive activities undertaken potentially in contact with COCs in soil and groundwater that have been identified in the RA at concentrations that exceed the Applicable Site Condition Standard as detailed in Section 7.4.1.1 of the RA and a copy shall be maintained on the Property for the duration of all intrusive activities. The Owner shall ensure that the Health and Safety Plan takes into account the presence of the COCs and is implemented prior to any intrusive activities being undertaken on the Property or portion (s) of the Property in order to protect workers from exposure to the COCs. The Health and Safety Plan shall be prepared in accordance with applicable Ministry of Labour health and safety regulations, along with all potential risks identified in the RA and include, but not limited to, occupational hygiene requirements, personal protective equipment, contingency plans and contact information. Prior to initiation of any Project (on the Property or portion (s) of the Property), the local Ministry of Labour office shall be notified, where so prescribed under the OHSA, of the proposed activities and that COCs have been identified in groundwater on the Property. The Health and Safety Plan shall be overseen by a Competent Person to review the provisions of the plan with respect to the proposed work and conduct daily inspections. The Owner shall retain a copy of the Health and Safety Plan to be made available for review by a Provincial Officer upon request.

**Restriction on Building Construction:**

- e) Refrain from constructing any Building(s) on, in or under the Property in the areas designated as RMM-3 on Figure 700743-080-7-EPS-1, unless the building contains a soil vapour intrusion control system:
  - i. Building(s) on the Property include a soil vapour intrusion control system (as illustrated in Figure 2 of the CPU) as detailed in section 7.4.3 of the Risk Assessment.
  - ii. The Owner shall retain a copy of all Vapour Barriers and Venting Components as-built drawings signed by a Licensed Professional Engineer along with the proposed testing and performance requirements for the Vapour Barrier and Venting Components of any Building on the Property for inspection by a Provincial Officer.
  - iii. An inspection and maintenance program shall be prepared and implemented to ensure the continuing integrity of the vapour intrusion control system. Inspections of the venting layer and Venting Components, where visually accessible, will be made for potential breaches. The inspection program shall include semi-annual (every six months) inspections as per the Risk Assessment and any deficiencies shall be repaired forthwith. The inspection results shall be recorded in a log book maintained by the Owner and available upon request by a Provincial Officer.

**Surface Water Monitoring Program:**

- f) The surface water monitoring program shall commence following issuance of the CPU. The surface water monitoring program shall be carried out as follows, and in accordance with section 7.4.5 and 7.5.3 of the RA and shall any contingency plan as detailed in section 7.6.4 of the RA:
  - i. The surface water monitoring program shall be conducted annually at the surface water sample locations shown on Figure 700743-080-7-EPS-1 of the CPU. A

- background sample shall be collected from Kettle Creek just upstream of the George Street Bridge.
- ii. The surface water samples shall be analyzed for the parameters listed in Schedule B of the CPU.
  - iii. The surface water monitoring program shall be completed annually in the summer months for at least three years and for every year thereafter until such time as the Director, upon application by the Owner, has reviewed the data available and either alters or revokes the CPU.
  - iv. Surface water analytical results shall be compared against the provincial water quality objectives and historical results
  - iv. The Owner shall keep a copy of all sampling data and records available for inspection by a Provincial Officer upon request.

**Annual Report:**

- g) The Owner shall prepare, by March 31 each year, 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:
  - i. a copy of all records related to the inspection and maintenance program for the barrier to site soils, fences;
  - ii. a copy of all records related to the inspection and maintenance program for any soil vapour intrusion control systems installed on the property;
  - iii. A copy of all records related to surface water sampling programs;
  - iv. a copy of all records related to the soil and groundwater management plans, the health and safety plan on the Property; and
  - v. a copy of all signed site plans and cross-sectional diagrams including any alterations.

**Property Use Restriction:**

- vi. Refrain from using the Property for any use other than the following use(s): 'community use', 'commercial use' and 'industrial use', as defined in O. Reg. 153/04.

**Restriction on Community Gardens:**

- vii. Refrain from planting a vegetable garden with consumable produce in existing soils.

**Prohibition of potable groundwater wells:**

- 4.3 The Owner shall,
- a. refrain from using groundwater in or under the Property as a source of water;
  - b. properly abandon any potable wells on the Property, as defined in subsection 35(1) of O. Reg. 153/04, according to Regulation 903, "Wells", R. R. O. 1990, made under the OWRA; and
  - c. refrain from constructing on the Property any wells, as defined in subsection 35(1) of O. Reg. 153/04.

### **Site Changes**

4.4 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, 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 or the discharge of any Contaminant of Concern into the natural environment from the Property. In support of this work, a new risk assessment may need to be completed in accordance with O. Reg. 153/04 and submitted to the Ministry for acceptance. An amendment to the CPU will be issued to address the changes set out in any notice received and any future changes that the Director considers necessary in the circumstances.

### **Reports**

4.5 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.

### **Property Requirement**

4.6 For the reasons set out in the CPU and pursuant to the authority vested in me under subsection 197(1) of the Act, I hereby order you 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.

### **Certificate of Requirement**

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

4.8 Within five (5) days after registering 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.

### **Owner / Occupant Change**

4.9 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 no notice shall be given of changes in the ownership of individual condominium units or any appurtenant common elements on the Property.

### **Financial Assurance**

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

#### Part 5: General

- 5.1 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, such finding does not invalidate or render unenforceable the requirement in other circumstances nor does it invalidate or render unenforceable the other requirements of the CPU.
- 5.2 An application under subsection 168.6(3) of the Act to alter any terms and conditions in the CPU, or impose new terms and conditions, or revoke the CPU, shall be made in writing to the Director, with reasons for the request.
- 5.3 The Director may amend 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 provided, 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.
- 5.4 Subsection 186(3) of the Act provides that failure to comply with the requirements of the CPU constitutes an offence.
- 5.5 The requirements of the CPU are minimum requirements only and do not relieve the Owner from, complying with any other applicable order, statute, regulation, municipal, provincial or federal law, or obtaining any approvals or consents not specified in the CPU.
- 5.6 Notwithstanding the issuance of the CPU, further requirements may be imposed in accordance with legislation as circumstances require.
- 5.7 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.
- 5.8 Failure to comply with a requirement of the CPU by the date specified does not relieve the Owner(s) from compliance with the requirement. The obligation to complete the requirement shall continue each day thereafter.
- 5.9 In the event that the Owner complies with the provisions of Items 4.7 and 4.8 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 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 6: Hearing before the Environmental Review Tribunal

- 6.1 Pursuant to section 139 of the Act, you may require a hearing before the Environmental Review 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.
- 6.2 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.
- 6.3 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. 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  
Fax Toll Free: 1(844) 213-3474  
Email: [ERTTribunalSecretary@ontario.ca](mailto:ERTTribunalSecretary@ontario.ca)

and

Rob Wrigley, Director

Ministry of the Environment, Conservation and Parks  
733 Exeter Road  
London, ON, N6E 1L3  
Telephone: (519) 280-3077  
Toll Free number: 1-800-265-7672  
Fax: (519) 873-5020  
Email: [rob.wrigley@ontario.ca](mailto:rob.wrigley@ontario.ca)

- 6.4 Unless stayed by application to the Tribunal under section 143 of the Act, the CPU is effective from the date of issue.
- 6.5 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 Environmental Registry of Ontario. 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 Environmental Registry of Ontario. The notice must be delivered to the Minister of the Environment, Conservation and Parks at 777 Bay Street, 5<sup>th</sup> Floor, Toronto, Ontario M7A 2J3 by the earlier of:

6.5.1 two (2) days after the day on which the appeal before the Tribunal was commenced; and

6.5.2 fifteen (15) days after service on you of a copy of the CPU.

6.6 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.

6.7 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:

6.7.1 fifteen (15) days after the day on which notice of the issuance of the CPU is given in the Environmental Registry of Ontario; and

6.7.2 if you appeal, fifteen (15) days after the day on which your notice of appeal is given in the EBR Environmental Registry of Ontario.

Further information on the requirements of the Tribunal regarding an appeal can be obtained directly from the Tribunal by:

Tel: (416) 212-6349

Fax: (416) 326-5370

[www.elto.gov.on.ca](http://www.elto.gov.on.ca)

Issued at London this day of , 2021.

Rob Wrigley,  
Director, section 168.6 of the Act

**Schedule 'A'**

**Property Specific Standards (Soil and Groundwater) for each Contaminant of Concern**

<b>Contaminants of Concern (COC)</b>	<b>Property Specific Standards for Soil (µg/g)</b>	<b>Property Specific Standards for Groundwater (µg/L)</b>
Acenaphthene	1.1	N/A
Acenaphthylene	0.74	N/A
Ammonia-N (total)	177	5400
Anthracene	6.5	N/A
Antimony	2.3	N/A
Benz(a)anthracene	22	N/A
Benzene	0.17	N/A
Benzo(a)pyrene	20	N/A
Benzo(b)fluoranthene	26	N/A
Benzo(g,h,i)perylene	16	N/A
Benzo(k)fluoranthene	9	N/A
Boron (Hot Water Soluble)	2	N/A
Chromium (VI)	2	N/A
Chrysene	18	N/A
Cyanide (CN <sup>-</sup> )	0.48	N/A
Dibenz(a,h)anthracene	4.2	N/A
Ethylbenzene	0.32	N/A
Fluoranthene	46	N/A
Fluorene	1.7	N/A
Indeno(1,2,3-cd)pyrene	19	N/A
Lead	1320	N/A
Manganese	NA	996
Methyl t-butyl ether (MTBE)	0.2	N/A
Methylnaphthalene, 2-(1-) Total	7.3	N/A
Molybdenum	2.5	N/A
Naphthalene	4.9	N/A
Petroleum Hydrocarbons F1	204	N/A
Petroleum Hydrocarbons F2	336	N/A
Petroleum Hydrocarbons F3	3240	N/A
Petroleum Hydrocarbons F4	13200	N/A
Phenanthrene	26	N/A
Pyrene	38	N/A
Silver	2	N/A

Contaminants of Concern (COC)	Property Specific Standards for Soil ( $\mu\text{g/g}$ )	Property Specific Standards for Groundwater ( $\mu\text{g/L}$ )
Sulphate	216	N/A
Toluene	1.2	N/A
Xylene (Total)	2.6	N/A
Zinc	588	N/A

N/A= not applicable

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**Schedule 'B'**

**Surface Water Monitoring Analytical Parameters**

<b>Contaminants of Concern (COC)</b>
PHC Fractions F1- F4
Polycyclic Aromatic Hydrocarbons (PAHs)

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**Schedule 'C'**

**CERTIFICATE OF REQUIREMENT**

**s.197(2)**

***Environmental Protection Act***

This is to certify that pursuant to Item 4.6 of Certificate of Property Use number 7688-BSLNSF03 issued by Rob Wrigley, Director of the Ministry of the Environment, Conservation and Parks, under sections 168.6 and 197 of the Environmental Protection Act, on XXXX, 2021, being a Certificate of Property Use and order under subsection 197(1) of the Environmental Protection Act relating to the property known as Port Stanley Harbour Lands – East Pier South, in Port Stanley, Ontario, being part of Property Identifier Number 35253-0218 (LT) (the "Property") with respect to a Risk Assessment and certain Risk Management Measures and other preventive measure requirements on the Property

**THE MUNICIPALITY OF CENTRAL ELGIN**

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.

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

Schedule 'D' – Figures and Plans

Plan of Survey



Figure 1

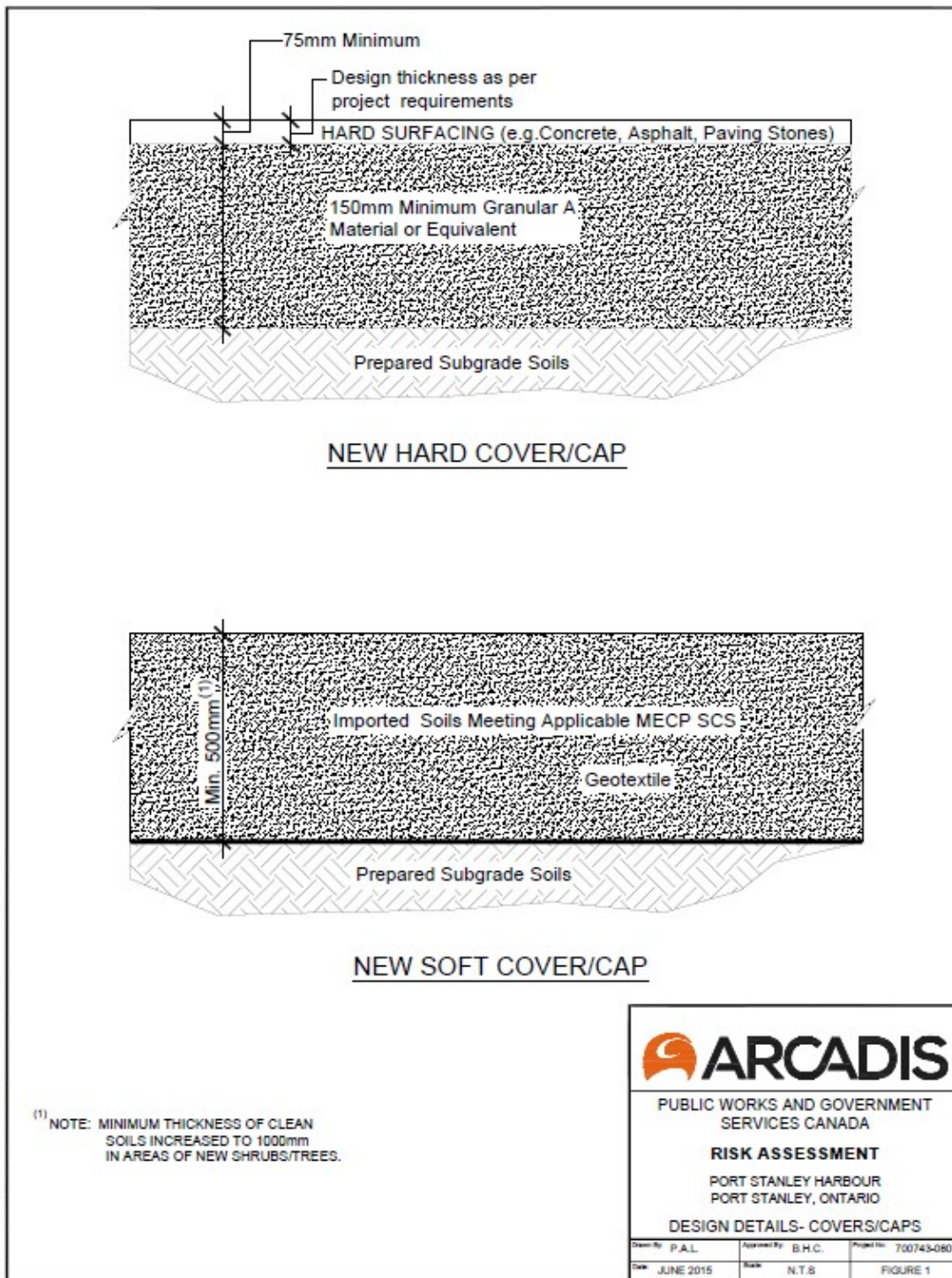


Figure 2

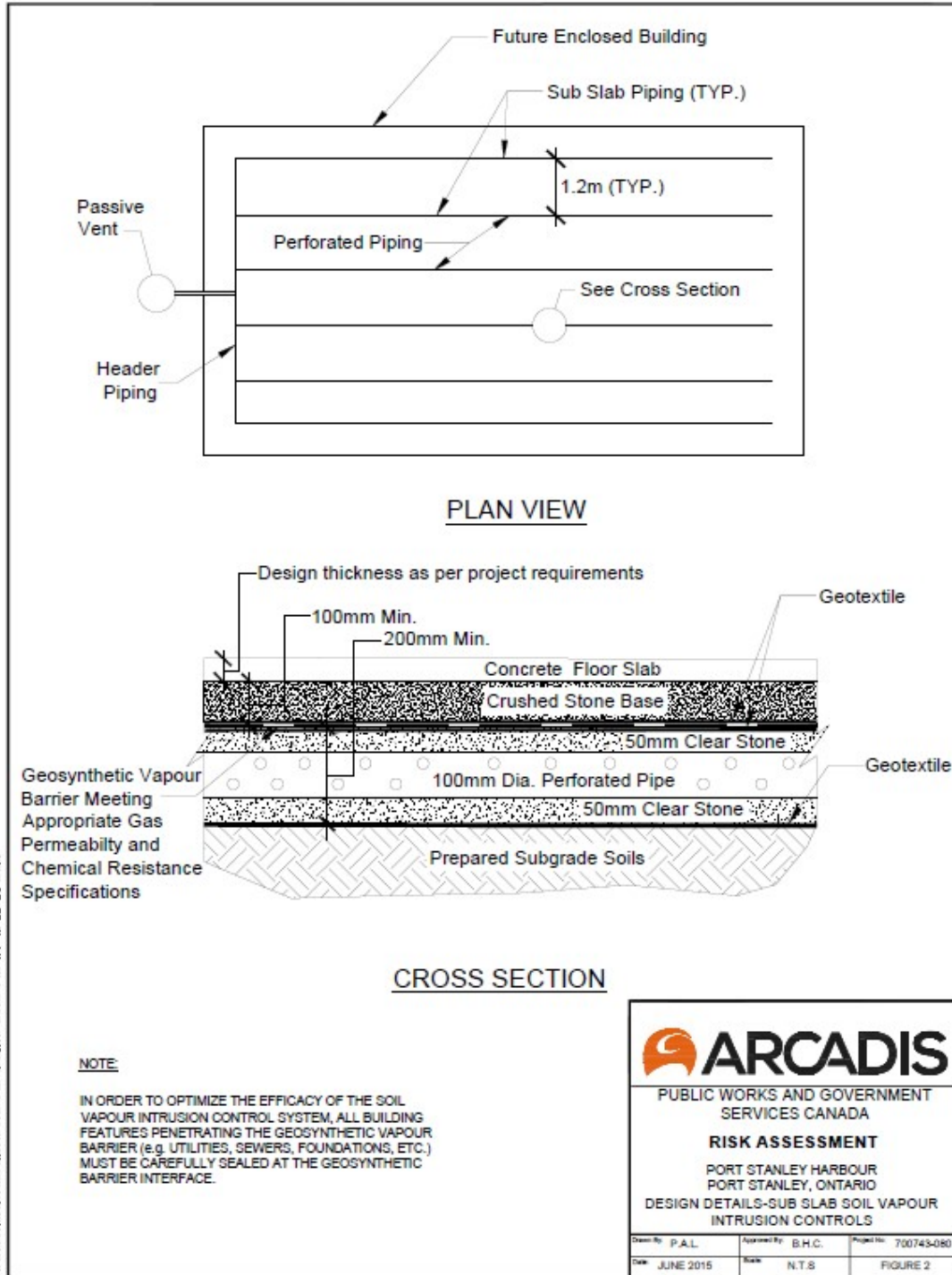


Figure 700743-080-7-EPS-1

