

# Certificate of Property Use

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

Certificate of property use number: 5340-C9JSQY

Risk assessment number: 0676-C23GWV

Owner: Muskoka D&M Corp.  
190 Hotchkiss Street  
Gravenhurst, Ontario  
P1P 1H6

(Owner)

Site: 19 West Street North, Fenelon Falls, Ontario

(Property)

With a Legal Description of:

Part of Lot 23, Concession 9, as delineated by Parts 1 and 2 of Reference Plan 57R-8353, in the Geographic township of Fenelon, Town of Kawartha Lakes, Ontario.

being all of PIN 63160-0414

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) Risk Management Measures (RMMs) that are required to be implemented are found in Part 4 of the CPU, Director Requirements. Key RMMs specified in Part 4 include, but are not limited to:
- Prohibiting the construction of any Building (s) on the Property with basement as specified in Section 4.2 (a) of this CPU;
  - Maintaining the existing hard cap and soil cap barriers and installing, inspecting and maintaining any new hard cap or soil cap barriers in this area of the Property as per Section 4.2 (b) to 4.2 (g) ) of this CPU;
  - Prohibiting the planting of garden produce for consumption, other than those planted in above ground containers such that they are isolated from the subsurface conditions as per Section 4.2 (h) of this CPU;
  - Develop and implement a Groundwater Monitoring Program as per Section 4.2 (i) of this CPU;
  - Implementing a soil and ground water management plan during any intrusive activities undertaken on the Property potentially in contact with COCs in soil and ground water that have been identified in the RA at concentrations that exceed the applicable site condition standards as per Section 4.2(j) of this CPU.
  - Implementing a health and safety plan during any intrusive activities undertaken on the Property potentially in contact with COCs in soil and ground water that have been identified in the RA at

concentrations that exceed the applicable site condition standards as specified in Section 4.3 of this CPU;

- Prohibiting the use of ground water in on or under the Property as per Section 4.4 of this CPU; and,
  - Registering a certificate on the Property title in accordance with Section 197 of the *Environmental Protection Act* and that before dealing with the Property in any way, a copy of the CPU is to be given to any person who will acquire an interest in the Property as per Section 4.9, 4.10 and 4.11 of this CPU.
- ii) Duration of Risk Management Measures identified in Part 4 of the CPU is summarized as follows:
- a. The soil management plan and the health and safety plan shall be required for the Property during any activities potentially in contact with or exposing site soils for as long as the Contaminants of Concern are present on the Property.
  - b. 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:

“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;

“Clear Stone” means a graded aggregate intended for use in drainage, backfill, bedding, and other applications as specified in Ontario Provincial Standard Specification 1004 (OPSS MUNI. 1004);

“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 may cause an Adverse Effect;

“Contaminants of Concern” & “COC” has the meaning as set out in section 3.2 of the CPU;

“CPU” means this Certificate of Property Use Number No. 5340-C9JSQY as it may be altered from time to time and bearing document # 5340-C9JSQY;

“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;

“Granular A” means a set of requirements for dense graded aggregates intended for use as granular base within the pavement structure, granular shouldering, and backfill, as specified in Ontario Provincial Standard Specification 1010 (OPSS.MUNI 1010);

“Groundwater Monitoring Program” means the groundwater monitoring as specified in section 4.2 i of the CPU;

"Impacted soil" is soil in which one or more contaminants are present at a concentration greater than the Property Specific Standard for the contaminant as specified in Table 1A – Schedule A of this CPU without incorporation of risk management measures;

"Licensed Professional Engineer" means a person who holds a license, limited licence or temporary licence under the *Professional Engineers Act*, R.R.O. 1990, c.P.28;

"Ministry" means Ontario Ministry of the Environment, Conservation and Parks;

"O. Reg. 153/04" means *Ontario Regulation 153/04 Records of Site Condition – Part XV.1 of the Act* under Environmental Protection Act, R.S.O. 1990, c. E.19.

"O. Reg. 347" means *R.R.O. 1990, Reg. 347: General - Waste Management* under Environmental Protection Act, R.S.O. 1990, c. E.19.

"Owner" means **Muskoka D&M Corp.** the current owner of the Property, and any future Property Owner (s);

"Property" means the property that is the subject of the CPU and described in the "Site" section on page 1 above, and illustrated in Figure 1 of Schedule A which is attached to and forms part of this CPU;

"Property Specific Standards" 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 O. Reg. 153/04, , made under the Act;

"Risk Assessment" (RA) means the Risk Assessment No. **0676-C23GWV** accepted by the Director on December 7, 2021, and set out in the following documents:

- "Modified Generic Risk Assessment Submission 19 West Street North, Fenlon Falls, Ontario", report prepared by Nova Tox Inc., dated April 5, 2021
- "Modified Generic Risk Assessment Submission 19 West Street North, Fenlon Falls – Version 2/Submission 2, Ontario", report prepared by Nova Tox Inc., dated June 30, 2021
- "Re: MGRA Resubmission for 19 West Street North, Fenlon Falls, ON [MGRA1945-21b; IDS#0676-C23GWV]", email from Mark Chappel, Nova Tox Inc., received by TASDB on August 20, 2021, with following document[s] attached:
  - PastedGraphic-2.pdf
  - Phase II - Grace and Associates Inc.1.pdf
  - 18BF027 2021-05-14 REPORT 4.pdf
- "Human Health and Ecological Risk Assessment – 19 West Street North, Fenelon Falls, Ontario", report prepared by Novo Tox Inc., dated October 2021
- "RE: Risk Assessment for 19 West Street North, Fenelon Falls, ON - IDS Ref. No. 0676-C23GWV; MGRA 1945-21b - ADDENDUM - SIGNED RM PLAN - Dated October 16th, 2021 by Email", email from Mark Chappel, Nova Tox Inc., received by TASDB on October 16, 2021, with following document[s] attached:
  - 20-534-RM Measures\_Final.pdf
  - 10152102.pdf
  - PastedGraphic-1.pdf

- “Re: Request for Additional Information - Risk Assessment for 19 West Street North, Fenelon Falls, ON [RA1945-21c; IDS#IDS Ref. No. 0676-C23GWV]”, email from Mark Chappel, Nova Tox Inc., received by TASDB on October 20, 2021, with following document[s] attached:
  - Phase ONE ESA Report Fenelon.pdf
  - 4Nov2020\_19 West St N Fenelon Falls\_Draft Phase Two ESA\_Trinity v.2.pdf
- “Re: Request for Additional Information - Risk Assessment for 19 West Street North, Fenelon Falls, ON [RA1945-21c; IDS#IDS Ref. No. 0676-C23GWV - Email # 2.]”, email from Mark Chappel, Nova Tox Inc., received by TASDB on October 20, 2021, with following document[s] attached:
  - Phase II - Grace and Associates Inc.1.pdf
- “Re: Request for Additional Information - Risk Assessment for 19 West Street North, Fenelon Falls, ON [RA1945-21c; IDS#IDS Ref. No. 0676-C23GWV]”, email from Mark Chappel, Nova Tox Inc., received by TASDB on October 20, 2021, with following document[s] attached:
  - 18BF027 2021-05-14 REPORT 4.pdf
  - 5 - 18BF027 2021-04-05 Report 3 LET Confirmatory Soil Sampling and Chemical Testing.pdf
  - 18BF027 2021-09-16 Report 7 Revised.pdf
  - 18BF027 CSM Revision 2 2021-10-14 - Final Submission to MECP.pdf
- “Human Health and Ecological Risk Assessment – 19 West Street North, Fenelon Falls, Ontario”, report prepared by Novo Tox Inc., dated November 14, 2021
- “Re: Request for Additional Information/Clarifications (November 22, 2021) -RA for 19 West Street North, Fenelon Falls, ON [RA1945-21c; IDS#0676-C23GWV]”, email from Mark Chappel, Nova Tox Inc., received by TASDB on November 23, 2021, with following document[s] attached:
  - 20-534 19WestStNorth Disposition Table RA3\_new comments 22Nov2021.pdf
- “Re: Request for Additional Information/Clarifications (November 22, 2021) -RA for 19 West Street North, Fenelon Falls, ON [RA1945-21c; IDS#0676-C23GWV]”, email from Mark Chappel, Nova Tox Inc., received by TASDB on November 23, 2021, with following document[s] attached:
  - 20-534\_MGRAmode1\_11Oct2021with RM applied.xlsx
- “Re: Request for Additional Information/Clarifications (November 22, 2021) -RA for 19 West Street North, Fenelon Falls, ON [RA1945-21c; IDS#0676-C23GWV]”, email from Mark Chappel, Nova Tox Inc., received by TASDB on November 25, 2021, with following document[s] attached:
  - 20-534 19WestStN Disposition Table RA425Nov2021.pdf
  - 18BF027 DRAWING 6-15 UPDATED, 2021-11-24.pdf
  - 18BF027 DRAWING 11-A UPDATED, 2021-11-24.pdf
  - 18BF027 DRAWING 11-B UPDATED, 2021-11-24.pdf
  - MW9-19\_March, 2020.pdf
  - MW9-19\_October, 2019.pdf
- “Re: Request for Additional Information/Clarifications (November 22, 2021) -RA for 19 West Street North, Fenelon Falls, ON [RA1945-21c; IDS#0676-C23GWV]”, email from Mark Chappel, Nova Tox Inc., received by TASDB on November 25, 2021, with following document[s] attached:
  - Table 2-CSM for 19WestStN\_revised 25Nov2020.pdf
  - DRAWING 6-3 Revised.pdf
- “Re: Request for Additional Information/Clarifications (November 26, 2021) -RA for 19 West Street North, Fenelon Falls, ON [RA1945-21c; IDS#0676-C23GWV]”, email from Mark Chappel, Nova Tox Inc., received by TASDB on December 1, 2021, with following document[s] attached:
  - 20-534 19WestStNorth Disposition Table RA3b-Addendum 30Nov2021.pdf
  - 20-534 RA 19WestSt FenelonFalls 30Nov2021-Section 4.4.5.pdf
  - 18BF027 2021-12-01 Report 7 Revision 3 - Water Well Inventory Summary.pdf
  - 20-534 RA 19WestSt FenelonFalls 30Nov2021-Section 7 – RMP.pdf
  - 20-534 RA 19WestStFenelonFalls\_MandatoryCertifications\_30Nov2021.pdf

- 20-534 RA 19WestSt FenelonFalls 30Nov2021.pdf
- 20-534-RM Measures\_Final\_NovaTox-MBN Rev Nov16-21.pdf
- “Re: Request for Additional Information/Clarifications (November 26, 2021) -RA for 19 West Street North, Fenelon Falls, ON [RA1945-21c; IDS#0676-C23GWV]”, email from Mark Chappel, Nova Tox Inc., received by TASDB on December 1, 2021, with following document[s] attached:
  - 18BF027 CSM Revision 3A 2021-11-29 MA\_NovaTox (003)-MJC.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;

“Risk Management Plan” (RMP) means the risk management plan specific to the Property contained in Appendix J for the Risk Assessment and/or Part 4 of the CPU;

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

“Unimpacted Soil” means soil that meets the soil criteria identified in Table 6: Generic Site Condition Standards for Shallow Soils in a Potable Ground Water Condition of the Ministry’s *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.

## 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 the Director accepts a risk assessment relating to a property, he or she may, when giving notice under clause 168.5 (1)(a), issue a certificate of property use to the owner of the property, requiring the owner to do any of the following things:
  - a. Take any action specified in the certificate that, in the Director’s opinion, is necessary to prevent, eliminate or ameliorate any adverse effect on the property, including installing any equipment, monitoring any contaminant or recording or reporting information for that purpose.
  - b. 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 the 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 196(1) of the Act states that the authority to make an order under the Act includes the authority to require the person or body to whom the order is directed to take such intermediate action or such procedural steps or both as are related to the action required or prohibited by the order and as are specified in the order.
- 2.8 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.
- 2.9 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.
- 2.10 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.
- 2.11 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 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: Residential/Parkland/Institutional as defined in O. Reg. 153/04.
- 3.2 The Contaminants on, in or under the Property that are present either above **Table 6: Generic Site Condition Standards for Shallow Soils in a Potable Ground Water Condition** 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 and groundwater or for which there are no such standards, are defined as the Contaminants of Concern. The Property Specific Standards for these Contaminants of Concern are set out in **Table 1A and Table 1B of Schedule "A"**, which is attached to and forms part of the CPU.
- 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.

#### **Part 4: Director Requirements**

Pursuant to the authority vested in me under section 168.6(1) 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 Section 4.1, carry out or cause to be carried out the following key elements of the Risk Management Measures:

#### **Prohibition of the construction of Buildings with basements:**

- a. The Owner shall refrain from constructing Buildings with basements on the site. The construction of Buildings with basements is prohibited.

#### **Hard cap and fill cap barriers:**

- b. Subject to section 4.2(c), prior to the Property or any part thereof being used or developed, fill cap and hard cap barriers shall be installed over the entirety of the Property in accordance with Section 7.2.1 and Appendix J of the RA whenever on the Property there is less than 1.0 m of Unimpacted Soil below the soil surface, so as to prevent exposure to the Contaminants of Concern (COCs) identified on the Property and shall be maintained for as long as the COCs are present on the Property. The fill cap barrier(s) and the hard cap barrier(s) shall, respectively, consist of the following:
  - (i) The fill cap barrier(s) shall consist of a minimum of one (1) metre of cover, consisting of at least 500 millimeters of Unimpacted Soil overlaying a geotextile material (or equivalent) placed immediately on top of the impacted soil.
  - (ii) The hard cap barrier(s) shall consist of a cover of asphalt, concrete, a building slab, or building foundation and floor slab, consisting of at least 150 millimetres (mm) of Granular "A" or equivalent material overlain by at least 75 mm of asphalt, concrete, stone or concrete pavers or a combination thereof.
- c. There is no need for fill or hard cap barriers on the Property or any part thereof prior to the Property or any part thereof being used or developed where exposure to the Contaminants of Concern that may cause an Adverse Effect is prevented by fencing that prevents access to the Property or any part thereof.
- d. Prior to occupancy of any building on the Property and, if applicable, within 90 days of completion of the installation of the fill or hard cap barriers on the Property or portion(s) of the Property, the Owner shall submit to the Director written confirmation signed by a Licensed Professional Engineer that the barriers have been installed in accordance with the requirements of Section 4.2(a) of this CPU and in accordance with final design specifications.
- e. Prior to occupancy of any building on the Property and, if applicable, within 90 days of completion of the installation of the fill or hard cap barriers on the Property, or portion(s) of the Property, the Owner shall submit to the Director a site plan that clearly identifies the location of each of the different barriers.
- f. An inspection and maintenance program shall be prepared and implemented to ensure the continuing integrity of the fill and hard cap barriers as long as the COCs are present on the Property. The inspection program shall include semi-annual inspections (spring and fall) of the barriers' integrity in accordance with Appendix J and Sections 7.4.1.1 and 7.4.1.2 of the RA. Any barrier deficiencies shall be repaired forthwith. If cracks, breaches or any loss of integrity in the barriers cannot be repaired or addressed in a timely manner, contingency measures shall be implemented to ensure that no exposure to the COCs occurs. The restoration of any damaged portions of the barriers shall, at minimum, meet the original design specifications and Section 4.2(a) of this CPU. The Owner shall

submit to the Director written confirmation, prepared and signed by a qualified Licensed Professional Engineer, that the barriers have been repaired in accordance with the requirements of Section 7.4.1.2 and Appendix J of the RA and Section 4.2(a) of this CPU. The written confirmation shall also include a description of any contingency measures that were put in place and shall be submitted to the Director within 30 days of the completion of any barrier repairs and/or restorations. The Owner shall keep records of the inspections, maintenance and repairs and make them available for review by a Provincial Officer upon request.

- g. An inspection and maintenance program, as described in Section 4.2(e) with respect to any fencing on the Property or any part thereof shall be implemented so long as fencing is required because the Property or any part thereof is not being used or developed.

**Prohibition of Garden Products:**

- h. The Owner shall refrain from planting any garden products for consumption on the Property unless planted in above-ground containers such that the plants are isolated from the subsurface conditions. The planting of garden products for consumption on the Property is prohibited for as long as the COCs in soil and ground water remain present unless the plants are isolated from the subsurface conditions

**Groundwater Monitoring Program**

- i. Within 60 calendar days of the issuance of this CPU, a Groundwater Monitoring Program shall be developed. The Groundwater Monitoring Program shall:
  - (i) Be overseen by a Qualified Person;
  - (ii) Consist of the measurement of groundwater levels and sampling from selected on-site monitoring wells and proposed off-site wells with the intent of delineating the extent of all groundwater contaminants of concern as specified in Table 1B of Schedule 'A'.
  - (iii) The measurement of groundwater levels and the collection of groundwater samples shall occur semi-annually (i.e., spring and fall) and shall continue until such time as this CPU is altered or revoked;
  - (iv) Groundwater samples shall be sent to an accredited laboratory and analyzed for all groundwater contaminants of concern as specified in **Table 1B** of Schedule 'A';
  - (v) A contingency protocol to deal with concentrations exceeding the site-specific standards as specified in Table 1B of Schedule 'A';
  - (vi) Be implemented within 30 days of written approval from the Director;
  - (vii) An annual report documenting the Groundwater Monitoring Program shall be prepared by a Qualified Person and submitted to the Director on or before March 31st following each year of monitoring. The annual report shall detail the sample results, sample locations, borehole logs/monitoring well construction details along with an evaluation of the temporal trends in groundwater quality and an assessment of the potential for off-property migration of impacted groundwater;
  - (viii) Any changes to the Groundwater Monitoring Program must be submitted to the Director in writing by the Owner and be prepared by a Qualified Person. Changes shall only be implemented by the Owner upon receiving approval from the Director.

**Soil and Ground Water Management Plan:**

- j. The property-specific soil and ground water management Plan (Plan) shall be developed for the Property and implemented during all intrusive activities potentially in contact with or exposing COCs in soil or ground water on the Property as detailed in Section 7.2.2 of the RA and the RMP (Appendix J of RA). A copy of the 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 Plan prior to



undertaking the short-term emergency repairs. For planned intrusive activities, this 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 the RMP. The Plan shall include, but not be limited to, the following key components as deemed necessary by a Qualified Person:

- (i) oversight by a Qualified Person;
- (ii) include dust control measures and prevention of soils tracking by vehicles and personnel from the Property;
- (iii) management of excavated soils including 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;
- (iv) storm water management measures to control the potential transport of COCs off-site during on-site construction/redevelopment activities. This may include, but not be limited to, silt fences and filter socks on catch-basins and utility covers as necessary;
- (v) characterization of excavated excess soils, not intended for on-site use, to determine if the excavated excess soils exceed the Property Specific Standards listed in Table 1A of Schedule "A" attached to this CPU (Table 1A) and/or the Applicable Site Condition Standards for parameters other than those identified in Table 1A and require off-site disposal in accordance with the provisions of Ontario Regulation 347 made under the Act;
- (vi) de-watering trenches. Any trenches that may be constructed on the Property shall be dewatered prior to entry;
- (vii) characterization and management of ground water as a result of dewatering activities. Where dewatering is required, dewatering activities will be conducted by a qualified dewatering contractor, in a manner that will not involve discharges to the natural environment (directly or indirectly via a storm sewer). Excess water obtained as a result of dewatering, shall be temporarily stored on the Property prior to off Property disposal at an approved waste water treatment facility as per Ontario Regulation 347, made under the Act, or treated and discharged to the sanitary sewer through a sanitary sewer use agreement. Prior to disposal through a City's sanitary sewer, a permit must be obtained and the collected groundwater must be sampled and analysed to ensure sewer use by-laws are met. Alternatively, excess ground water may be removed directly by an appropriately licensed waste management system (i.e. via pump truck);
- (viii) include record keeping. Record keeping is to include, but not to be limited to:
  - dates and duration of work
  - weather and site conditions
  - location and depth of excavation activities/dewatering activities,
  - dust control measures,
  - stockpile management and drainage,
  - all soil and ground water characterization results obtained as part of the soil and ground water management plan,
  - names of the Qualified Persons, contractors, haulers, and receiving sites for any excavated excess soils and ground water (as a result of dewatering activities) removed from the property, and
  - any complaints received relating to site activities; and,
- (ix) copy of the plan and any amendments and the records kept thereunder shall be made available for review by the Ministry upon request.

**Health and Safety Plan:**

- 4.3 A property-specific health and safety plan (plan) shall be developed for the Property and implemented during all planned intrusive activities undertaken potentially in contact with COCs in soil and ground water that have been identified in the RA. A copy of the plan shall be maintained

on the Property for the duration of all intrusive activities. The Owner shall ensure that the 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 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 soils and or ground water on the Property. The plan shall be overseen by a Competent Person 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 to be available for review by the Ministry upon request.

**Prohibition of potable ground water wells:**

- 4.4 Refrain from using the groundwater beneath the Property as a potable water supply. The installation of groundwater wells on the Property is prohibited.
- 4.5 Further to Section 4.4 of this CPU, the installation of groundwater monitoring wells for environmental testing purposes is permitted.

**Site Changes**

- 4.6 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, 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. 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.

**Reports**

- 4.7 Retain a copy of any reports required under the CPU, the Risk Assessment and any reports referred to in the Risk Assessment (until otherwise notified by the Director) and within ten (10) days of the Director or a Provincial Officer making a request for a report, provide a copy to the Director or Provincial Officer.

**Property Requirement**

- 4.8 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**

- 4.9 Within fifteen (15) days from the date of receipt of a certificate of requirement, issued under subsection 197(2) of the Act and as set out in Schedule B, register the certificate of requirement on title to the Property in the appropriate land registry office.
- 4.10 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 for the Property confirming that registration has been completed.

## **Owner / Occupant Change**

- 4.11 While the CPU is in effect, 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 related common elements on the Property.

## **Financial Assurance**

- 4.12 Within 30 days of acceptance of the Groundwater Monitoring Program as required by Section 4.2i. of this CPU, the Owner shall submit to the Director, a detailed written cost estimate, prepared by a Qualified Person, to complete the approved Groundwater Monitoring Program, including contingency, as required by Section 4.2 i. for a period of two years.
- 4.13 Within 15 days of the Owner's receipt of written approval from the Director of the acceptance of the cost estimate amount specified in Section 4.12 of this CPU, the Owner shall provide financial assurance to the Crown in the right of Ontario in the same amount that was approved by the Director. The financial assurance shall be in the form of a certified cheque payable to the Ontario Minister of Finance or an irrevocable letter of credit issued by a Canadian Chartered Bank as outlined in the Ministry's Financial Assurance Guideline F-15. This amount is to cover the costs associated with the Groundwater Monitoring Program as required by Section 4.2 i. of this CPU.
- 4.14 The amount of financial assurance required in Section 4.12 of this CPU shall be reviewed every two years, for as long as the Groundwater Monitoring Program is required, by a Qualified Person, for the Owner, and an updated cost estimate shall be included in the annual monitoring report as required by Section 4.2 i. of this CPU.

## **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 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.
- 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 you 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.
- 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 absolve you 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 provisions of Sections 4.9 and 4.10 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 may be carried out and satisfied by the condominium corporation by and 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 (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.
- 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 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  
Fax Toll Free: 1(844) 213-3474  
Email: [ERTTribunalSecretary@ontario.ca](mailto:ERTTribunalSecretary@ontario.ca)

and

David Bradley, Director  
Ministry of the Environment and Climate Change  
300 Water Street, 2<sup>nd</sup> Floor South Tower  
Peterborough, ON  
K9J 3C7

Email: [david.bradley@ontario.ca](mailto:david.bradley@ontario.ca)

- 6.4 Unless stayed by 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 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 Environmental Commissioner of Ontario who will place it on the EBR registry. The notice must be delivered to the Environmental Commissioner at 605-1075 Bay Street, Toronto, Ontario M5S 2B1 by the earlier of:

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 Ministry of the Environment, Conservation and Parks, College Park 5th Flr, 777 Bay St, Toronto, ON 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 Environmental Registry of Ontario.

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

<https://olt.gov.on.ca/>

Issued at Peterborough this \_\_\_\_ day of \_\_\_\_\_ 2021.

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David Bradley,  
Director, section 168.6 of the Act

**Schedule 'A': Figure 1**  
(not to scale)

**Insert site survey Figure 9**

**Schedule 'A': Figure 3**  
(not to scale)



**Insert RMMs – Figure 7**

**Schedule “A” – Table 1A: Property Specific Standards – Soil**

<i>Parameter</i>	<i>Units</i>	<i>Maximum Soil Concentration</i>	<i>Site Condition Standard<sup>1</sup></i>	<i>Recommended Property Specific Standard</i>
Antimony	µg/g	8.6	7.5	10.3
Barium	µg/g	1,080	390	1,296
Chromium VI	µg/g	9.73	8	11.7
Lead	µg/g	572	120	686
Zinc	µg/g	631	0.7	757
Benz[a]anthracene	µg/g	1.36	0.5	1.63
Benzo[a]pyrene	µg/g	1.14	0.3	1.37
Benzo[b]fluoranthene	µg/g	1.51	0.78	1.81
Dibenzo[a,h]anthracene	µg/g	0.19	0.1	0.23
Fluoranthene	µg/g	2.47	0.69	2.96
Indeno-1,2,3-cd]pyrene	µg/g	0.65	0.38	0.78
Phenanthrene	µg/g	6.61	1.0	7.9
PHC F3	µg/g	1,000	300	1,270

**Notes:**

<sup>1</sup> MECP (2011) Table 6: Site Condition Standards for Shallow Soils in a Potable Ground Water Condition for Residential/Parkland/Institutional Property Use and coarse textured soil.

**Schedule “A” – Table 1B: Property Specific Standards – Groundwater**

<i>Parameter</i>	<i>Units</i>	<i>Maximum Soil Concentration</i>	<i>Site Condition Standard<sup>1</sup></i>	<i>Recommended Property Specific Standard</i>
Barium	µg/L	9,890	1,000	11,868

**Notes:**

<sup>1</sup> MECP (2011) Table 6: Site Condition Standards for Shallow Soils in a Potable Ground Water Condition for Residential/Parkland/Institutional Property Use and coarse textured soil.

**Schedule 'B'**

**CERTIFICATE OF REQUIREMENT**

**s.197(2)**

***Environmental Protection Act***

This is to certify that pursuant to Item 4.8 of Certificate of Property Use number 5340-C9JSQY issued by David Bradley, Director of the Ministry of the Environment, Conservation and Parks, under sections 168.6 and 197 of the Environmental Protection Act, on XXX, 2021, being a Certificate of Property Use and order under subsection 197(1) of the *Environmental Protection Act* relating to the property municipally known as 19 West Street North, Fenlon Falls, Ontario, being all of PIN 63160-0414, (the "Property") with respect to a Risk Assessment and certain Risk Management Measures and other preventive measure requirements on the Property.

**Muskoka D&M Corp.**

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.