




# COMMUNICATION UPDATE

<b>TO:</b>	Mayor and Members City Council
<b>DATE:</b>	October 3, 2022
<b>SUBJECT:</b>	Chedoke Creek Remediation - HW.22.09 (City Wide)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>SUBMITTED BY:</b>	Cari Vanderperk Director, Watershed Management Public Works Department
<b>SIGNATURE:</b>	

## Project Delays

Further to the information provided in the Communication Update HW.22.08 on September 20, 2022, the information provided at the September 7, 2022 General Issues Committee in Report PW19008(q), and the recommendations adopted from Report PW19008(r), construction work in preparation for the targeted dredging of Chedoke Creek resumed on Wednesday, September 21, 2022 and has been completed.

The in-water dredging work was planned to commence September 28, 2022. However members of the Haudenosaunee Development Institute (HDI) continue to attend the site (arriving by watercraft within the dredge area and occupying space on the equipment laydown area that needs to be accessed in order to complete the pipeline that connects the dredging machine to the Dredge Material Management Area) expressing they are exercising their treaty rights, which has delayed the work due to health and safety concerns.

As detailed in an email sent to members of Council on September 29 from the Director of Hamilton Water, last Thursday, two members of the HDI arrived onsite via the water, erected a tent, and began building a bonfire on a fenced parcel of land owned by the Royal Botanical Gardens (RBG) on the west bank of Chedoke Creek. This parcel is being used by the contractor, with permission from RBG, as a laydown area for dredging equipment. As per the site access and safety protocol, the City's contractor approached the two individuals and asked them to refrain from starting a fire and to remove their tent and vacate the site, or emergency services would be contacted. The

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individuals refused to leave the site and proceeded to build a fire. The City's contractor contacted emergency services to respond and the Hamilton Police Service (HPS) attended the site. The responding officers had conversations with the members of the HDI and requested that they follow the contractor's site safety protocols, or to otherwise leave the site, both of which were refused. To date, the HPS is continuing to monitor the situation.

Throughout the weekend, continuous attempts were made by the contractor to begin dredging operations. On both days, members of the HDI occupying the equipment laydown area and accessing the water created an unsafe situation, which required the contractor to stop work. These delays will impact the project schedule, potentially impacting the contractor's ability to complete the in-water dredging in advance of the current MECP Order deadline of December 31, 2022. Staff are continuing conversations with the contractor and our contract administrator in order to fully evaluate the critical path and understand the risks of further delays.

Conversations with the HPS regarding response to the site are ongoing. As well, the RBG has been contacted to understand their position regarding the HDI members occupying their land and any actions they may take.

Staff have continued to keep the MECP updated on the situation and are meeting with representatives from the District Office on Tuesday, October 4 to discuss next steps.

### **Environmental Monitoring Agreements**

The recommendations from Report PW19008(r) authorized staff to continue consultations with the Mississaugas of the Credit First Nation, the Huron-Wendat Nation, the Six Nations of the Grand River, and the Haudenosaunee Confederacy Chiefs Council (through their representative agency, the HDI) on the Chedoke Creek Remediation Project as well as to negotiate and enter into agreements, where appropriate, to provide for Indigenous Environmental Monitors to attend the work site throughout the duration of the project.

As an update, please be advised that staff have reached out to each First Nation community who have been consulted throughout the project to discuss their participation in Environmental Monitoring and the terms of any necessary agreements. Conversations with the Mississaugas of the Credit First Nation, the Huron-Wendat Nation, the Six Nations of the Grand River are ongoing and have been positive. Conversations with the Haudenosaunee Confederacy Chiefs Council (through their representative agency, the HDI) have been unsuccessful to date.

Staff have been communicating with the HDI regularly since August 18 to try to find a reasonable accommodation that allows this project to proceed without further delay. Unfortunately, staff have encountered obfuscation and changing demands. At this time,

all communications from the City to the HDI are being conducted through representative legal counsel. However, HDI representatives continue to email City staff and members of Council directly. The most recent communications between the City's Legal Services Division and the legal counsel for the HDI (Gilbert's LLP), are attached to this Communications Update HW.22.09 as Appendix A - Letter to City from Gilbert's LLP Dated September 22, 2022 and Appendix B - Letter to Gilberts LLP from City dated September 29, 2022. The City's most recent letter requests that all actions by the HDI that are delaying the project cease and desist immediately and that all correspondence from the HDI be directed through Legal counsel.

While ongoing and meaningful consultation and project monitoring are important to all parties, ensuring the safety of everyone attending the project site is paramount.

As always, we will continue to keep members of Council informed.

For regular updates on project progress please reference the story map on the Chedoke Creek Remediation website at [www.hamilton.ca/chedokecreekremediation](http://www.hamilton.ca/chedokecreekremediation).

#### **APPENDICES AND SCHEDULES ATTACHED**

Appendix A - Letter to City from Gilbert's LLP Dated September 22, 2022

Appendix B - Letter to Gilberts LLP from City Dated September 29, 2022