



Appendix A

Protocol for First Nations Consultation



1195 Stellar Drive, Unit 1
Newmarket, ON L3Y 7B8
Tel: (905) 830-5656
Fax: (905) 830-0176
www.uyssolutions.ca

Protocol for First Nations Consultation

for the

Upper York Sewage Solutions (UYSS) Environmental Assessment (EA)

The Regional Municipality of York ("York Region") is, at the direction of the Ontario Minister of the Environment, conducting an Environmental Assessment (EA) to develop a sustainable sewage servicing solution for the upper York area including the Towns of Aurora, Newmarket and the communities of Holland Landing, Queensville, and Sharon in East Gwillimbury. York Region is interested in identifying and addressing potential adverse effects of any sewage servicing solution on First Nations' ancestral territories, and specific cultural and heritage interests that First Nations may have within the preliminary study area.

York Region has identified the value of developing a formal Protocol to be used to ensure contact is made with First Nations and that effective consultation occurs with First Nations that want to be consulted. Throughout this Protocol, references to "First Nations" shall be interpreted to include First Nations with an interest in the preliminary study area, as listed in Attachment A, and related recognized First Nation organizations such as the Chiefs of Ontario where appropriate. This Protocol will be used to facilitate information sharing and consultation in respect of the UYSS project during the IEA and construction phases.

This Protocol is intended to create a consultation process to identify and address specific cultural and heritage interests that First Nations may have within the preliminary study area and potential impacts to established or asserted Aboriginal or Treaty rights or Claims within the preliminary study area. Also, this Protocol establishes a process for addressing identified adverse effects of the UYSS project in respect of First Nations human remains or First Nations archaeological sites. It is not intended to alter legal or other requirements of York Region or First Nations that already exist or that could be recognized in the future.

1. Notice to First Nations

York Region will notify First Nations in accordance with this Protocol and the *Code of Practice – Consultation in Ontario's Environmental Assessment Process* (MOE – June 2007) with respect to the UYSS EA.

Initial notification shall be made by means of a combination of letters and follow-up telephone contact by representatives of York Region. York Region may retain consultants to make initial contact on its behalf but York Region will undertake to be an active participant throughout the consultation process whether or not representatives are acting on its behalf in various capacities.

Notice (initial and subsequent) shall be made to the Chief and Council of respective First Nations. Should the Chief or representatives of Council of a First Nation direct it to do so, York Region will communicate with the nominated representatives of the Chief or Council. So long as the principal communications are with the nominated representative of a First Nation, York Region may, in addition to the principal communication, forward copies of correspondence or project information to the Chief and Council directly.

The First Nations shall be responsible for notifying York Region, in writing, of the identity of, and any changes to the identity of, their nominated representative.

Notification letters sent via regular mail will be considered to have been delivered five calendar days following the date of mailing.

2. Special Requirements

Where, within 60 days of receiving initial notification by York Region, a First Nation identifies to York Region that it has special requirements such as the translation of project documents, York Region should be notified of such requirements in writing. York Region will consider such requests and advise the respective First Nations of the ability of York Region to satisfy such special requirements in a timely manner. York Region will consider such requests in keeping with the spirit of this Protocol and the obligations of York Region to consult with First Nations. Where appropriate, York Region will enter into an agreement with the respective First Nation regarding special requirements.

It is possible that York Region may encounter unexpected First Nation human remains or a First Nation archaeological site through the implementation of the UYSS project. Should this occur, and should the situation require special expertise and additional First Nations' resources, York Region will consider this to be a special requirement of the First Nations involved and will support negotiations to reach an agreement on the details of what additional resources will be provided and the circumstances of how these resources may be provided, including the special expertise and additional First Nations' resources.

Should such an eventuality arise, York Region will work diligently and in good faith to reach an agreement with the First Nations involved regarding the nature and scope of the support required from York Region.

3. Review of Information

First Nations will review information supplied by York Region to determine:

- The need for additional information.
- The need for the active consultation with the First Nation to identify and address any potential impact of the project on the First Nation as set out in this Protocol.

Having reviewed the information supplied by York Region, a First Nation may request a meeting to review and discuss the information with York Region and York Region will arrange to meet at a mutually agreeable date and location.

4. Where Additional Information is Required

- The First Nation will notify York Region in writing of the type and quantity of information required.
- York Region will provide the information, where publicly available and reasonably requested, to the First Nation upon receipt of the written request.
- York Region will provide the First Nation with an expected date of delivery if the requested information is expected to be completed as part of the project, but is not yet available.
- York Region will work cooperatively with the First Nation in obtaining the information requested, where the request is reasonable and if the information is not readily available as part of the project.

5. No Requirement for Active Consultation

Where, following a review of the information provided by York Region, a First Nation has determined that there is no requirement for further active consultation:

- The First Nation may provide York Region with written notification that there is no requirement for active consultation. York Region will continue with the UYSS EA project as outlined in the information provided by York Region to the First Nation.
- York Region will continue to provide periodic updates regarding the project in order to inform the First Nation of the project status.

6. Requirement for Active Consultation

Where, following review of the information provided by York Region, a First Nation determines that there is a requirement for further active consultation:

- The First Nation will provide York Region with written notification that there is a requirement for active consultation.
- York Region will work with each First Nation requiring consultation to develop a consultation plan as appropriate which will identify time frames, information and presentation requirements, for a joint or individual First Nation process.

- York Region and First Nations will undertake consultation, jointly among all participating First Nations, or on an individual basis, as per the consultation plan described above.

7. No Written Response Received by York Region

If York Region does not receive written notification from a First Nation within 45 days after the required information has been provided to the First Nation by York Region stating (a) that further active consultation is not required or (b) that further active consultation is required as set out in paragraph 6 then it is acknowledged that:

- York Region will continue with the UYSS EA as outlined in the information provided by York Region to the First Nation.
- York Region will continue to provide periodic updates regarding the UYSS in order to inform the First Nation that has not responded to York Region of the project status.

8. Identification of Potential Impacts to Established or Asserted Aboriginal or Treaty Rights

Where an archaeological assessment or the consultation process identifies a potential impact of the UYSS project to an established or asserted Aboriginal or Treaty Right:

- York Region and participating First Nations shall enter into negotiations that aim to develop a solution to mitigate the identified potential impact.
- York Region will seek a resolution from the Provincial or Federal government (as applicable) should York Region not have the jurisdiction to resolve potential impacts related to the Aboriginal or Treaty Right.
- Where the Provincial or Federal governments are referred a matter for resolution, York Region shall continue with development activities in a manner that, as appropriate, mitigates any identified potential impacts of the said development on the established or asserted Aboriginal or Treaty Right(s).

9. Identification of First Nation Human Remains or First Nation Archaeological Sites

- (a) The requirements for pre-development archaeological assessment and mitigation of archaeological sites, as established under the provisions and regulations of the Ontario *Heritage Act*, the Ontario *Planning Act*, the Ontario *Environmental Assessment Act* and the Ministry of Culture *Standards and Guidelines for Archaeological Assessment*, shall be considered the baseline for dealing with First Nation archaeological sites. Should a First Nation determine that there is a

need for mitigation measures to be undertaken beyond those established by these Acts and Standards:

- York Region and the First Nation shall enter into negotiations to develop a mutually agreeable plan to address such matters.
 - York Region will refer the matter to the Provincial government should York Region not have the jurisdiction to resolve such matters.
- (b) The requirements for investigating discoveries of human remains, as established under the provisions of the Ontario *Cemeteries Act*, shall be considered the baseline for dealing with the discovery of First Nation human remains. Should a First Nation determine that there is a need for additional investigative measures to be undertaken:
- York Region and the First Nation shall enter into negotiations to develop a mutually agreeable plan to address such matters.
 - York Region will refer the matter to the Provincial government should York Region not have the jurisdiction to resolve such matters.
- (c) Where an archaeological assessment, or the consultation process, identifies a potential impact to First Nation human remains or a First Nations archaeological site (an archaeological site will be as defined in the Ministry of Culture *Standards and Guidelines for Archaeological Assessment*):
- York Region will halt development activity in the immediate area of First Nation human remains or a First Nation archaeological site and to notify the First Nations, as listed in Attachment A, immediately upon such a discovery. It is understood that, while development activity in the vicinity of such a discovery would be halted, development activity elsewhere would continue.
 - York Region and the First Nations will participate in a joint process to determine the cultural identity of the First Nation human remains or a First Nation archaeological site.
 - Where the joint identification process leads to consensus on the cultural identity of the First Nation human remains or archaeological site, the First Nations, associated with the identified cultural group, shall enter into negotiations to develop a solution to mitigate the anticipated impact.
 - Where the joint identification process does not lead to consensus on the cultural identity of the First Nation human remains or archaeological site, York Region and all participating First Nations shall enter into negotiations to develop a solution to mitigate the anticipated impact.

- York Region will refer the matter to the Provincial government should York Region not have the jurisdiction to resolve anticipated impacts related to the First Nation human remains or a First Nations archaeological site.
- (d) Where previously undiscovered First Nation human remains or First Nation archaeological site(s) are discovered during construction:
- York Region will halt development activity in the immediate area of the First Nation human remains or First Nation archaeological site and to notify the First Nations as listed in Attachment A immediately upon such a discovery. It is understood that, while development activity in the vicinity of such a discovery would be halted, development activity elsewhere would continue.
 - York Region and the First Nations will participate in a joint process to determine the cultural identity of the First Nation human remains or a First Nation archaeological site.
 - Where the joint identification process leads to consensus on the cultural identity of the First Nation human or archaeological remains, York Region and the First Nations associated with the identified cultural group shall enter into negotiations to develop a solution to mitigate the anticipated impact.
 - Where the joint identification process does not lead to consensus on the cultural identity of the First Nation human remains or archaeological site, York Region and all participating First Nations shall enter into negotiations to develop a solution to mitigate the anticipated impact.
 - York Region will refer the matter to the Provincial government should York Region not have the jurisdiction to resolve anticipated impacts related to the First Nation human remains or archaeological site.
 - Where the Provincial government is referred a matter for resolution related to First Nation human remains or a First Nation archaeological site, York Region shall continue with development activities in a manner that mitigates any anticipated impacts of the said development on the First Nation human remains or archaeological site.

10. Addition of New Participants

Situations may arise whereby First Nations which were initially involved in a consultation process ceased their involvement during the consultation process. Further, certain First Nations may not initially have participated in the process described by this Protocol. In either case, First Nations with a known historic interest within the boundaries of the

Study Area but not active in the consultation process may wish to engage or re-engage, as the case may be, provided:

- The First Nation has a proven historic interest within the boundaries of the Study Area.
- The First Nation presents written notice, including proof of its historic interest within the boundaries of the Study Area, where requested by the participating First Nations or York Region.
- The inclusion of a new First Nation is not objected to by the existing participants in the process described by this Protocol.

11. Emergency Situations

Should a situation arise that could reasonably be considered an emergency involving danger either to property or to human health and safety, York Region may proceed to address the emergency as necessary. Where the presence of an emergency requires action to be taken outside the procedures created by this Protocol, York Region will take reasonable care to (as much as possible) ensure that the spirit of the Protocol is observed during and after the emergency situation. In any event, following the passing of the emergency situation, York Region will assess the actions taken during the emergency and ensure that appropriate updated information is provided to First Nations being consulted pursuant to this Protocol in order to allow an assessment of what other consultation might be required in such circumstances.

12. Elevation of Matters in Dispute

Should a dispute arise during consultations pursuant to this Protocol, York Region will discuss the nature of the dispute with the First Nation and attempt, in good faith, to reach a resolution that is agreeable to each Party. Should York Region and the First Nation in question be unable to reach an agreement in the normal course, York Region shall work together with the First Nation to decide upon an approach to resolving the dispute. In such circumstances, York Region agrees that it will elevate the matter within its organization and make available, as is reasonable, York Regional Chair and/or members of York Regional Council for discussions with the Chief(s) and Council of the First Nation related to the resolution of the matters in dispute.

13. Applicable Law

This Protocol and the process created thereby shall be governed by the laws of the Province of Ontario and Canada as applicable.



Attachment
List of Interested First Nations (as of May 2009)

A

- Alderville First Nation
- Beausoleil First Nation
- Chippewas of Georgina Island
- Chippewas of Mnjikaning
- Curve Lake First Nation
- Hiawatha First Nation
- Iroquois Confederacy
- Mississaugas of Scugog Island
- Mississaugas of the New Credit First Nation
- Mohawks of the Bay of Quinte
- Moose Deer Point First Nation
- Nation Huronne Wendat
- Six Nations of the Grand River

Glossary

Aboriginal Rights Rights that certain Aboriginal peoples (First Nations, Inuit and Métis) hold as a result of their ancestors' long-standing use and occupancy of the land.

Cultural Identity The identity of the First Nations people or peoples with whom a First Nations Archaeological Site or First Nation Human Remains are most closely associated.

First Nation Archaeological Sites

Sites at which First Nation remains are found and will be defined in the Ministry of Culture Standards and Guidelines for Archaeological Assessment.

First Nation Human Remains

Remains of First Nations peoples, including remains found at individual and communal burial sites including ossuaries. These will be treated in keeping with the provisions of the Ontario *Cemeteries Act*.

Individual Environmental Assessment (“IEA”)

An environmental assessment undertaken pursuant to Part II of the Ontario *Environmental Assessment Act*. In the case of the Upper York Sewage Solutions IEA, the IEA was ordered to be undertaken by the Ontario Minister of the Environment.

Preliminary study area

The area identified in the Preliminary Draft UYSS IEA Terms of Reference, which will be finalized during preparation of the UYSS EA (shown in the attached plan).

Treaty Rights Rights that a First Nation or other Aboriginal People has which are set out in a Treaty with the Canadian federal government (the “Crown”).