January 8, 2014

His Worship Bob Bratina
Mayor of the City of Hamilton
Hamilton City Hall
2nd floor- 71 Main St. West
Hamilton, Ontario L8P 4Y5

Subject: Hamilton Harbour: Improvements to the Woodward Avenue Wastewater Treatment Plant– The Canadian Environmental Assessment Act, 2012 Legal Duty to Consult with Aboriginal Peoples

Mr. Mayor Bratina,

In consideration of the provision of financial support to the Hamilton Harbour Improvements to the Woodward Avenue wastewater treatment plant project under the Green Infrastructure Fund, Infrastructure Canada (INFC) has reviewed the Project information to assess whether any requirements under the Canadian Environmental Assessment Act, 2012 (CEAA 2012) exist for this Project. As well, INFC has reviewed the Project information to determine whether there is a duty to consult with Aboriginal peoples.

Based on the recipient’s information provided in the Application to the Government of Canada Green Infrastructure fund proposal – Hamilton water is life: Investing in clean water, investing in life (2012), the completed Environmental, Aboriginal Consultation and Project Location Questionnaire received on Dec. 11, 2012, it is understood that the Project involves significant upgrades to the Woodward Avenue Wastewater Treatment Plant (WWTP) to reduce effluent discharge loadings of ammonia, suspended solids, and phosphorus, as well as to mitigate the occurrence of combined sewer overflows into the Hamilton Harbour. The proposed project will involve several components including: the construction of a new raw sewage pumping station; upgrades to the facility’s existing secondary treatment processes; the construction of a new tertiary treatment process; and a new chlorine contact tank with dechlorination. The project will also involve implementing measures to better monitor and manage combined stormwater and wastewater flows during wet weather events as well as a major upgrade and expansion of the power supply system, power distribution system, and standby power facilities.
Canadian Environmental Assessment Act, 2012 Requirements

Based on INFC's review of the recipient's information provided to date, INFC is of the opinion that there are no requirements under CEAA 2012.

Aboriginal Consultation Obligations

Based on INFC's review of the recipient's information provided to date, INFC has concluded that a legal duty to consult Aboriginal peoples arises in the context of the Project for INFC. INFC acknowledges that the City of Hamilton has already undertaken consultation activities with several first nations groups and as such, INFC will review the consultation activities undertaken to date to determine whether further Aboriginal consultation or accommodation is required. Should additional consultation activities or accommodation measures be deemed necessary by Canada, INFC will rely on the City of Hamilton to undertake further consultation to ensure that all issues have been addressed or to implement accommodation measures, if required. INFC will be contacting you to discuss the next steps.

Please note that the construction of the Project may not proceed until any obligations for Aboriginal consultation and accommodation have been met and a confirmation in writing has been issued by INFC.

Should the actual nature or scope of the Project differ from that noted above, or if future changes in the design or location of the Project are proposed, it is the responsibility of the City of Hamilton, as the Project recipient, to immediately notify INFC. The department will then reassess the Project in accordance with the requirements under CEAA 2012 and whether the change to the Project triggers a duty to consult.

If you have any questions regarding CEAA 2012 or its regulations, please refer to the information provided on the Canadian Environmental Assessment Agency’s internet site at www.ceaa-acee.gc.ca.

Should you have any comments or questions, please contact Julie-Anne Marcoux at 613-960-9482 or by email at julie-anne.marcoux@infc.gc.ca.

Sincerely,

Julie-Anne Marcoux
Section Leader, Aboriginal Affairs and Environmental Services (ACES)

cc: Mark Bainbridge
Manager, Sustainable Initiatives, City of Hamilton

Christine Tremblay
Senior Program Analyst, INFC

Project File