

**STAFF REPORT: ENGINEERING & PUBLIC WORKS SOLID WASTE DIVISION**

**REPORT TO:** Council  
**MEETING DATE:** March 14, 2011  
**REPORT NO.:** EPW.11.026  
**SUBJECT:** Aboriginal Consultation and Accommodation Agreement – Landfill Expansion and Mining  
**PREPARED BY:** Jeffery Fletcher, Manager of Solid Waste and Environmental Initiatives

**A. Recommendations**

THAT Council receive report entitled “Aboriginal Consultation and Accommodation Agreement – Landfill Expansion and Mining” EPW.11.026; and

THAT Council approves providing capacity to the Saugeen Ojibway Nations’ review of the Environmental Screening Process to a maximum of \$17,300 as outlined in the Agreement, with a contingency amount of \$5,000 for a total upset limit of \$22,300; and

THAT the Mayor and Clerk be authorized to execute the Interim Aboriginal Consultation and Accommodation Agreement, upon approval of the Director of Engineering and Public Works and the Town’s Solicitor.

**B. Background**

As part of the Town’s project to study the potential expansion and mining of The Blue Mountains’ Landfill through an Environmental Screening Process (ESP), the Town seeks to engage Aboriginal stakeholders in meaningful consultation. Town Staff have been in discussion and communication with representatives from the Saugeen Ojibway Nations (SON). This group, SON, consists of the Chippewas of Saugeen and the Chippewas of Nawash Unceded First Nation. The Town’s landfill project is located within the traditional territory of the SON. A consultation process is being engaged to understand how the project could adversely affect the SON Aboriginal or Treaty rights or interests.

Throughout the ESP the Town has communicated with a number of identified Aboriginal groups using project notices and letters. It has been determined that the SON group has a territorial interest in The Blue Mountains. And, in consultation with the project consultant (Golder Associates) and the Ministry of the Environment, it is not anticipated that any other Aboriginal or Métis group will express rights or interests in relation to the landfill project.

SON has expressed a desire to be meaningfully involved in the planning, review and development of the landfill project, and have provided to the Town an “Interim Aboriginal Consultation and Accommodation Agreement”.

The purpose of the agreement is to confirm the commitment of the Town to an appropriate and adequate consultation, including provision of resources. The Agreement will also confirm commitment of the Town to enter into a future agreement that deals with any mitigation and accommodation measures required. The Agreement and this process are intended to promote reconciliation by establishing a cooperative and mutually beneficial working relationship between SON and the Town with respect to the project.

The Town's landfill project must provide SON with capacity included sufficient funding to ensure they can participate fully in the consultation process itself, including expert review of the Environmental Screening Process, legal expenses and SON Staff costs. SON will be conducting an archaeology, hydrogeology, aquatic environment and natural heritage review of the Environmental Screening document.

This Agreement is considered interim and anticipates termination following review and determination of any mitigation measures required. A new agreement would then be formed that identifies to the Town any potential impacts arising from the project and may suggest any mitigation measures, such as monitoring.

The interim agreement also extends to any construction phase of the Project. If a cultural site is identified at any time, prescribed steps will be taken to minimize impacts and ensure respectful treatment of artefacts.

### **C. The Blue Mountains' Strategic Plan**

This solid waste project addresses the Town's Municipal infrastructure needs and addresses Strategic Action 2.5 "develop a waste management strategy to meet diversion targets and address landfill capacity".

### **D. Environmental Impacts**

The SON Agreement allows for additional environmental review of the landfill project.

### **E. Budget Impact**

The Agreement identifies a maximum financial reimbursement totalling \$17,300. SON will provide an itemized invoice and supporting documentation when submitting a reimbursement request to the Town. Staff also recommend committing an additional \$5,000 to the SON review for unforeseen contingencies, for a total budget commitment of \$22,300.

The expense related to the SON review of the project will be expensed out of the Landfill Mining and Expansion capital project budget (6-460-5007).

**F. Attached**

Attachment 1 – Draft Interim Aboriginal Consultation and Accommodation Agreement

Respectfully submitted,

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**Jeffery Fletcher**  
Manager of Solid Waste and Environmental Initiatives

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**Reg Russwurm**  
Director of Engineering and Public Works

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# INTERIM ABORIGINAL CONSULTATION AND ACCOMMODATION AGREEMENT

THIS AGREEMENT dated as of \_\_\_\_\_, 2011

BETWEEN:

**THE SAUGEEN OJIBWAY NATIONS**

**(Hereinafter "SON")**

AND:

**THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS**

**(Hereinafter "The Town")**

**(collectively "the Parties")**

REGARDING:

**THE EXPANSION AND MINING OF THE BLUE MOUNTAINS LANDFILL**

**(Hereinafter "the Project")**

**WHEREAS:**

1. The people of SON reside in and assert a special stewardship relationship with the SON Traditional Territory ("SONTT"), which includes the geographic areas currently known as the Town of Blue Mountains; and
2. The Town would like to secure a long-term solution to the solid waste disposal needs of the Town given the limited remaining capacity of the existing landfill which services the Town; and
3. The Town is undertaking process to expand the existing Blue Mountains Landfill in order to meet landfill needs of the constituents of the Town; and
4. The Project is located in the SONTT and could have downstream impacts on water bodies and lands claimed by SON, and on the SON Aboriginal and treaty fishery in Lake Huron; and
5. SON asserts aboriginal and treaty rights in respect of the SONTT, emanating from SON's historic use and occupation of these lands and waters; and
6. SON's Aboriginal and treaty rights are recognized and affirmed by section 35 of the *Constitution Act, 1982*; and

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7. The SON assert, and the Ontario Court confirmed in the case of *R. v. Jones and Nadjiwon*, [1993] 3 C.N.L.R. 182 (Ont. Prov. Div.), that the Saugeen Ojibway have a treaty and Aboriginal right to a commercial Aboriginal fishery; and
8. The SON also assert a right to subsistence fisheries and land-based harvesting practices and rights throughout the SONTT and these harvesting practices provide vital support for SON's Aboriginal culture and way of life as well as the economy, health and social relationships in the SON communities; and
9. SON filed a legal action with the Ontario Superior Court of Justice (*Chippewas of Saugeen First Nation and Chippewas of Nawash First Nation v. Canada et. al*, Court File 94-CQ-50872CM) claiming lands purportedly surrendered to the Crown in Treaty 72, including the bed of the Saugeen River; and
10. SON filed a legal action with the Ontario Superior Court of Justice (*Chippewas of Nawash Unceded First Nation and Saugeen First Nation v. Canada et al*. Court File 03-CV-261134CM1) claiming Aboriginal title to those parts of the Great Lakes which are part of SON's traditional territory including portions of the Great Lakes downstream from the Project; and
11. SON asserts that SON's Aboriginal and treaty rights entitle SON to be sustained as Aboriginal peoples by the lands, waters and resources of the SONTT and therefore SON has an obligation to protect the SONTT to ensure that it will be able to sustain the Anishinabe in the future; and
12. SON has expressed a desire to be meaningfully involved in the planning, review and development of activities that affect SON rights, including this Project; and
13. SON has incurred costs and may continue to incur costs associated with consultation and negotiations with the Town concerning the Project; and
14. The Parties wish to continue to build a positive relationship to reflect and address SON concerns about the Project and allow for the Project to be developed in a way that is respectful of and accommodates SON's rights and allows the Project to proceed.

**NOW THEREFORE** the Parties agree as follows:

15. In this Agreement,
- (a) "Anishinabe" means that group of Aboriginal people who identify themselves as "Anishinabe" in their own Aboriginal language, including but not limited to those Aboriginal groups known today and historically as Ojibway, Chippewa, Potawatomi, Ottawa, Odawa, Mississauga, and Nipissing and the ancestors of these groups;
  - (b) "burial site" means land where physical evidence of human remains is discovered;
  - (c) "cultural site" means lands where physical evidence of past human activity is discovered;

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- (d) “land” includes lands under water;
- (e) “Project” means the planning, approvals, construction, expansion, mining, operations and maintenance of the landfill located east of Grey County Road 13 on Part of Lot 26, Concession 10 in the former Township of Collingwood, as described in the project descriptions attached as Schedule “A”
- (f) "SON" means the Saugeen Ojibway Nation, consisting of the Chippewas of Nawash Unceded First Nation and the Chippewas of Saugeen First Nation;
- (g) “SON Rights” means SON’s Aboriginal and treaty rights including the SON Aboriginal commercial fishery and SON’s land claims;
- (h) “SON Traditional Territory” or “SONTT” means the territory that SON has traditionally used and occupied, including the waters that SON asserts as its traditional waters, as illustrated in the map attached as Schedule "B”;
- (i) "Town of the Blue Mountains" or “the Town” is the Corporation of the Town of the Blue Mountains, and includes any person, company, or other entity acting under the Town’s authority or on behalf of the Town.

## **PURPOSES OF AGREEMENT**

16. This Agreement will be implemented to promote the following purposes:
- (a) To confirm the commitment of the parties to an appropriate and adequate consultation process with SON, including provisions of resources for the consultation process, regarding the planning, approval, development, operation and maintenance of the Project; and
  - (b) To confirm the commitment of the parties to enter into a future agreement with provisions dealing with any mitigation and accommodation measures required for the Project; and
  - (c) To promote reconciliation by establishing a cooperative and mutually beneficial working relationship between SON and the Towns with respect to the Project.

## **MITIGATION**

17. The Parties acknowledge that the development of the Project in the SONTT must be carried out with a commitment to mitigating potential adverse effects and potential impacts on SON Rights and accommodating SON Rights where required.
18. The SON will identify to the Town any potential impacts on the Aboriginal and treaty rights of the SON arising from the Project and may suggest any mitigation measures, including environmental monitoring, to minimize impacts on SON’s rights. The Town commits to negotiate and enter into a future agreement with SON to address mitigation measures that are recommended by SON.

## **ARCHEOLOGICAL WORK**

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19. All archaeological work in connection with the Project will be carried out in accordance with the Ontario *Heritage Act* and its Regulations. The archaeological work will meet or exceed the Ontario Ministry of Culture standards and guidelines for consultant archaeologists as amended.

### **PROTECTION OF CULTURAL AND BURIAL SITES**

20. If a cultural site is identified at any time during construction or archaeological assessment, the Town will inform SON and the Parties will work collaboratively to minimize impacts and ensure respectful treatment of any artefacts in accordance with the practices and values of the SON as identified by the SON.
21. If at any time during construction, or archaeological assessment, human remains are encountered, the following steps will be taken:
- (a) The person in charge of the work will immediately contact both the Ministry of Culture, and the Cemeteries Regulation Unit of the Ontario Ministry of Consumer and Commercial Relations in Toronto (416-326-8392), SON and SON's archaeologist, the appropriate municipal police, the local coroner, and the Town's Archaeologist;
  - (b) All excavation and other activity that could disturb the site shall immediately cease, and the area shall be secured in a manner which protects the burial location and prevents public access and trespass;
  - (c) In addition to any requirements of the Ontario *Heritage Act* and *Cemeteries Act*, SON reserves the exclusive right to determine the requirements for treatment of Anishinabe human remains found at the site, including the procedures and ceremonies involved in their recovery, handling, protection or possible reburial. SON may require protections for an Anishinabe burial site which exceed the requirements of the *Heritage Act* and *Cemeteries Act*.
  - (d) SON may request, in its discretion, that a burial site which is Aboriginal in origin shall remain unexcavated and shall be protected in accordance with the specific wishes of SON, and the Towns shall comply with that request.

### **LAND CLAIMS ISSUES**

22. The Parties agree that the construction, operation and maintenance of the Project, where the Project are located on or affect lands claimed by SON, shall occur without prejudice to the claims of SON.

### **ENVIRONMENTAL REVIEW ISSUES**

23. SON shall retain technical advisers with expertise regarding archaeology, hydrogeology, aquatic environments and natural heritage. The technical advisers retained by SON shall review the technical aspects of, and technical reports prepared for the Project. Upon the completion of these reviews, the technical advisers retained by SON shall provide

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written confirmation that the Project as proposed will not impact the SON rights or will identify mitigation measures to address any Project impacts on SON's rights.

24. SON will identify for the Town any potential impacts of the Project on SON's rights, including any potential impacts on the aquatic and natural environment which could affect SON's rights, and may suggest mitigation measures including monitoring to address these impacts.
25. The Town will negotiate and enter into a future agreement with SON to address any mitigation measures that are recommended by SON.

## **FINANCIAL CONSIDERATIONS**

26. The Town agrees to pay the following costs incurred by SON to engage in an initial analysis of the Project in order to determine the extent of technical review required to either confirm that the Project will not have adverse impacts on SON rights or to identify the technical work necessary to fully identify potential adverse impacts on SON Rights and make recommendations for accommodation as part of the consultation and accommodation process:
  - (a) The cost to SON of retaining an expert in the field of archaeology, for the purposes of completing an initial review of the Project, to a maximum of \$1,700;
  - (b) The cost to SON of retaining an expert in the field of hydrogeology, for the purposes of completing an initial review of the Project, to a maximum of \$1,600;
  - (c) The cost to SON of retaining an expert in the field of aquatic environments, for the purposes of completing an initial review of the Project, to a maximum of \$1,400;
  - (d) The cost to SON of retaining an expert in the field of natural heritage, for the purposes of completing an initial review of the Project, to a maximum of \$1,600;
  - (e) The cost to SON of retaining legal advice, for the purposes of reviewing the Project and negotiating an agreement regarding the Project, of \$6,000; and
  - (f) The cost to SON of covering the per diems, travel and other costs for SON Staff, Chiefs or Councillors for their time specifically allocated to review of the Project and negotiation of an agreement regarding the Project, of \$5,000.
27. The Town will not be required to reimburse SON for any cost above the approved amount for the initial evaluation of the Project unless the additional costs are approved in writing by the Town prior to the work being conducted.
28. The Town agrees to reimburse submitted expenses within 30 days of an invoice itemizing and describing the expenses incurred along with supporting documentation being provided to the Town by SON.

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29. The Parties acknowledge that the work referred to in the preceding paragraph is preliminary in nature and that further technical work may be identified as necessary for the purposes of fully evaluating the impact of the Project on SON Rights. In the event that further work is determined to be necessary, the Parties agree to address any additional costs associated with further technical work in a future interim agreement. The Parties shall act reasonably in making decisions under this paragraph.
30. The Parties agree that if the consultation process identifies adverse impacts on the rights of SON the Parties shall enter into a final consultation and accommodation agreement to govern the terms under which the rights of SON will be accommodated or the terms upon which SON will be compensated for any adverse impacts on SON rights which may result from the Project.

### **GENERAL PROVISIONS**

31. Nothing in this Agreement relieves the Town from meeting any of the requirements of the *Environmental Assessment Act*, R.S.O. 1990, c. E.18, *Ontario Heritage Act*, R.S.O. 1990, c. O.18, *Cemeteries Act (Revised)*, R.S.O. 1990, c. C.4, or any other obligations the Towns may have at law.
32. Nothing in this Agreement shall be interpreted or implemented so as to derogate from or abrogate any inherent, treaty, aboriginal or other right of SON except as specifically set out in herein.
33. If a dispute arises between the Town and SON regarding the interpretation of any provision in this Agreement, the Parties or their duly appointed representatives will meet as soon as is practicable to attempt to resolve the dispute.
34. If the Parties are unable to resolve differences at the appropriate level, the interpretation issue will be raised to more senior levels of the Town and SON.
35. If the interpretation dispute cannot be resolved by the Parties directly, they may appoint an independent and mutually agreeable mediator to resolve that dispute within 60 days, or such period as agreed upon, or the Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation issue.
36. Time shall be of the essence regarding the execution and implementation of this Agreement and its Schedules.
37. This Agreement shall be binding upon and shall enure to the benefit of the Parties hereto and their respective successors and assigns, and in particular any successor or assignee of the Town.
38. This Agreement shall, in all respects, be subject to, interpreted, construed and enforced in accordance with and under the laws of Ontario and the laws of Canada applicable therein.

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39. Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be delivered by hand or transmitted by facsimile transmission and addressed as follows:

(a) If to SON:

The Saugeen First Nation  
Attention: The Chief of the Saugeen First Nation  
R.R.#1  
Southampton ON N0H 2L0  
Fax: (519) 797-2978

*and*

The Chippewas of Nawash Unceded Nation  
Attention: The Chief of the Chippewas of Nawash  
RR 5  
Warton, ON N0H 2T0  
Fax: (519) 534-2130

(b) If to the Town:

XXXXXXXXXXXXXXXXXXXXXX

or such other address or fax number as a party may, from time to time advise the other parties hereto by notice in writing given in accordance with the foregoing. The date of receipt of any such notice shall be deemed to be the date of delivery thereof, if delivered, and on the day of faxing and receipt of a successful transmission confirmation statement, if faxed, provided such day is a business day and if not, on the first business day thereafter.

40. The Parties may agree to amend this Agreement in writing on the basis of mutual consent.

41. Each Party agrees and acknowledges that it obtained independent legal advice regarding the terms and conditions, nature and effect of this Agreement and acknowledges that it has executed this Agreement voluntarily after receiving such advice.

42. This Agreement will terminate upon the execution of the agreement referenced in paragraph 18 save and except for paragraphs 17, 19, 20, 21, 22, 31, 32, 37 and 38 which shall continue in force until such time that the Parties expressly agree otherwise.

**IN WITNESS WHEREOF** the parties have executed this Agreement effective as of the date first written above.

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SIGNED, SEALED AND DELIVERED  
(in the presence of)

**THE CORPORATION OF THE TOWN  
OF THE BLUE MOUNTAINS**

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Per:

Title:

Date:

*I have the authority to bind the Corporation*

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SIGNED, SEALED AND DELIVERED  
(in the presence of)

**CHIPPEWAS OF NAWASH UNCEDED  
FIRST NATION**

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Per:

Title:

Date:

*I have the authority to bind the First Nation*

**SAUGEEN OJIBWAY FIRST NATION**

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Per:

Title:

Date:

*I have the authority to bind the First Nation*

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