

2 ENVIRONMENTAL ASSESSMENT PROCESS

This section provides an overview of the Environmental Assessment process that was carried out as part of the DRIC EA Study. The study followed the requirements of the *Ontario Environmental Assessment Act (OEAA)* under the Individual Environmental Assessment process, and the requirements of the Canadian Environmental Assessment Act under subsection 5(1)(a) of the Canadian Environmental Assessment Act. As such, both EA processes have been coordinated pursuant to the *Canada-Ontario Agreement on Environmental Assessment Cooperation (the Agreement)*.

As DRIC is a bi-national study, the EA processes undertaken in Canada included coordination of the Canadian study with the studies undertaken by the Michigan Department of Transportation (MDOT) and the Federal Highway Administration (FHWA). In the United States, the umbrella environmental law is the *National Environmental Policy Act (NEPA)*. NEPA provides for a decision-making process relying on interdisciplinary analysis, and consultation and commenting by the public, stakeholders, and regulatory agencies.

2.2 The Ontario Environmental Assessment Act

The purpose of the *OEAA* is to help protect and conserve Ontario's environment by ensuring that projects subject to the Act follow a planning process leading to environmentally sound decision-making.

For projects subject to the EA Act, an environmental assessment involves identifying and planning for environmental issues and effects prior to implementing a project. The process allows reasonable opportunities for public involvement in the decision-making process of the project. An EA document is prepared by the proponent of the project and is subject to review by the public and government agencies..

The *Detroit River International Crossing Study* has followed the requirements of the *OEAA* under the Individual Environmental Assessment (Individual EA) process (*Section 6.1 (2) of the OEAA*). In general terms, an environmental assessment is a study, which assesses the potential environmental effects and benefits of a project or undertaking on the environment. Key components of an EA include: consultation with members of the public, regulatory agencies, municipalities, and other stakeholders; First Nations engagement; the consideration of alternatives and their potential environmental effects; and the mitigation and management of environmental effects.

Under the Individual EA process, the first step in an application for approval to proceed with the planning of an Individual Environmental Assessment study under the *OEAA* is the submission of a *Terms of Reference (ToR)* for the Environmental Assessment (EA). A *ToR* sets out a framework that guides the preparation of the EA. The approval of the Terms of Reference is the first statutory decision made by the Minister of the Environment in the EA planning and approval process.

The *Detroit River International Crossing Study Environmental Assessment Terms of Reference (May 2004)* outlines the minimum considerations and study framework that were to be followed in completing this Environmental Assessment. This Terms of Reference document was approved by the Ontario Minister of the Environment on September 17, 2004.

This Individual EA study has been undertaken consistent with the requirements identified in *Section 6.1 (2) of the OEAA*. The study has addressed the following components:

- A description of the purpose of the undertaking;
- A description and statement of the rationale for the proposed undertaking, alternatives to the undertaking, and alternative methods for carrying out the undertaking;
- A description of:
 - The environment that will be affected or that might reasonably be expected to be affected, directly or indirectly, by the undertaking, the alternatives to the undertaking, and the alternative methods of carrying out the undertaking;
 - The effects that will be caused or that might reasonably be expected to be caused to the environment, by the undertaking, the alternatives to the undertaking, and the alternative methods of carrying out the undertaking;
 - The actions necessary or that may reasonably be expected to be necessary to prevent, change, mitigate or remedy the effects upon or the effects that might reasonably be expected upon the environment, by the undertaking, the alternatives to the undertaking, and the alternative methods of carrying out the undertaking;
 - An evaluation of the advantages and disadvantages to the environment of the undertaking, the alternatives to the undertaking and the alternative methods of carrying out the undertaking; and,
 - A description of the consultation undertaken by the proponent and the results of the consultation.

Other aspects of the environmental assessment process applicable to this project are described in the Ontario Environmental Assessment Act, which can be accessed at: http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90e18_e.htm

2.3 The Canadian Environmental Assessment Act

The *Canadian Environmental Assessment Act (CEAA)* is the legal basis for the federal environmental assessment process. The *Act* sets out the responsibilities and procedures for carrying out the environmental assessments of projects that involve federal government decision-making.

The federal environmental assessment process is applied whenever a federal authority has a specified decision-making responsibility in relation to a project, also known as a "trigger" for an environmental assessment. Specifically, the *Act* is "triggered" when a federal authority:

- Proposes a project;
- Provides financial assistance to a proponent to enable a project to be carried out;
- Sells, leases, or otherwise transfers control or administration of federal land to enable a project to be carried out; or
- Provides a licence, permit or an approval that is listed in the *Law List Regulations* that enables a project to be carried out.

As a co-proponent of the Canadian portion of the project, Transport Canada has determined that an EA is required pursuant to subsection 5(1)(a) of the *CEAA*. In addition, the project will require an approval

under the *Navigable Waters Protection Act*, which is administered by TC, and is identified in the *Law List Regulations* under CEAA. As such, TC has identified itself as a Responsible Authority (RA) for the assessment. Fisheries and Oceans Canada (DFO) is also a Responsible Authority, in relation to *Fisheries Act* authorizations that will be required for certain water crossings along the access road. The Windsor Port Authority (WPA) is a Prescribed Authority under the *Canada Port Authority Environmental Assessment Regulations*, in relation to federal water lots that will be crossed by the new international bridge. TC, DFO and the WPA coordinated their activities, to ensure that a single environmental assessment is conducted.

A number of federal authorities also identified themselves as having specialist or expert advice that may contribute to the conduct of the assessment, including: Environment Canada, Health Canada, Natural Resources Canada, Foreign Affairs Canada, the Canadian Transportation Agency and the Canada Border Services Agency. They participated as expert federal authorities in the EA process. Since the assessment is multi-jurisdictional, the Canadian Environmental Assessment Agency (the Agency) served as the Federal Environmental Assessment Coordinator (FEAC). Together, these departments comprise the federal review team.

The project is not described on the *Comprehensive Study List Regulation* of the Act, and at this time, the Responsible Authorities and Prescribed Authority are not aware of any issues associated with this project that would warrant a need to have it referred to a mediator or a review panel pursuant to section 25 of the Act. As such, section 18(1) of the Act requires that a screening level assessment of the project be carried out.

A screening is a systematic approach to identifying and documenting the environmental effects of a proposed project and determining the need to eliminate or minimize (mitigate) the adverse effects, to modify the project plan or to recommend further assessment through mediation or by a review panel.

As this project is also undergoing an Individual EA under the Ontario *Environmental Assessment Act*, this EA processes will be coordinated pursuant to the *Canada-Ontario Agreement on Environmental Assessment Cooperation*. Within this coordinated EA process, a separate federal screening report, based on the assessment documented in this report, was prepared to support federal decision-making.

2.4 Coordination of the Federal and Provincial Environmental Assessment Processes

As noted in **Section 2.3**, the federal and provincial EA processes were coordinated pursuant to the *Canada-Ontario Agreement on Environmental Assessment Cooperation* (the Agreement), which states that federal and provincial governments:

“will coordinate the environmental assessment processes whenever projects are subject to review by both jurisdictions ... The agreement maintains the current level of environmental standards and the legislative and decision-making responsibilities of both governments. While projects requiring both provincial and federal environmental assessment approvals will still require separate approvals, decisions will be based on the same body of information and there will be an ability to make decisions concurrently”.

A Canadian Agencies Advisory Group (CANAAAG) was established in 2005 to provide a forum for federal and provincial government agency representatives to receive regular project updates, and to exchange information on issues and concerns.

To further assist in coordination efforts, a Joint Assessment Committee (JAC) was established in early 2008, comprised of representatives from the Ontario Ministry of the Environment, MTO, the Agency, TC, DFO, and the WPA.

The goal of the coordinated process was to ensure that the study generated the type and quality of information required to satisfy both the *Canadian Environmental Assessment Act* and the *Ontario Environmental Assessment Act*; and provides findings on the environmental effects of the proposed project required for decision-making by the respective parties.

2.5 Coordination Between the Canada and United States DRIC Study Teams

As a bi-national study, the federal / provincial EA undertaken in Canada was also coordinated with studies in the United States, which were undertaken in order to gain approval through the *National Environmental Policy Act (NEPA)*. Although the documents and approval processes are different, the objectives and processes of *NEPA* are similar to that of *OEEA*. There is no *NEPA* document that is equivalent to the *OEA ToR*, however, the Purpose of the Undertaking discussion in an *OEA ToR* is comparable to the *Purpose and Need Statement* under *NEPA*.

A draft Purpose and Need Statement was prepared in parallel with the preparation of the *OEA ToR*. Consultation with relevant federal environmental and cooperating agencies on the draft Purpose and Need Statement took place during the preparation and review of the *OEA ToR*. Upon approval of the *OEA ToR* and the finalization of the *Purpose and Need Statement*, the Partnership coordinated efforts in conducting the Detroit River International Crossing study.

In addition, throughout the study process, the Partnership coordinated meetings between Canadian and United States federal and state/provincial agencies of common / shared interests so that, to the extent possible, a bi-national approach to identifying and addressing issues could be developed.