

Appendix K:

Ontario Environmental Assessment Act Notice of Approval to Proceed with the Undertaking and Associated Conditions

ENVIRONMENTAL ASSESSMENT ACT

SECTION 9

NOTICE OF APPROVAL TO PROCEED WITH THE UNDERTAKING

RE: An Environmental Assessment for the Detroit River International Crossing Study

Proponent: Ministry of Transportation

EA File No.: EA 02 07

TAKE NOTICE that the period for requiring a hearing, provided for in the Notice of Completion of the Review for the above-noted undertaking, expired on May 29, 2009.

I received two submissions that requested a hearing by the Environmental Review Tribunal.

I consider a hearing to be unnecessary in this case. Having considered the purpose of the *Environmental Assessment Act*, the approved Terms of Reference, the Environmental Assessment, the ministry Review of the Environmental Assessment and submissions received, I hereby give approval to proceed with the undertaking, subject to conditions set out below.

REASONS

My reasons for giving approval are:

- (1) The proponent has complied with the requirements of the *Environmental Assessment Act*.
- (2) The Environmental Assessment has been prepared in accordance with the approved Terms of Reference.
- (3) On the basis of the proponent's Environmental Assessment and the ministry Review, the proponent's conclusion that, on balance, the advantages of this undertaking outweigh its disadvantages appears to be valid.
- (4) No other more beneficial alternative method of implementing the undertaking was identified.

- (5) The proponent has demonstrated that the environmental effects of the undertaking can be appropriately prevented, changed, mitigated or remedied.
- (6) On the basis of the proponent's Environmental Assessment, the ministry Review and the conditions of approval, the construction, operation and maintenance of the undertaking will be consistent with the purpose of the *Environmental Assessment Act* (section 2).
- (7) The government, public and Aboriginal community review of the Environmental Assessment has indicated no outstanding concerns that have not been addressed or that cannot be addressed through commitments made during the Environmental Assessment process, through the conditions set out below or through future approvals that will be required.
- (8) The submissions received after the Notice of Completion of ministry Review was published are being addressed through commitments made during the Environmental Assessment process, through the conditions set out below or through future approvals that will be required, where appropriate. I am not aware of any outstanding issues with respect to this undertaking which suggest that a hearing should be required.

CONDITIONS

The approval is subject to the following conditions:

Definitions

For the purposes of these conditions:

"Director" means the Director, Environmental Assessment Program of the Environmental Assessment and Approvals Branch;

"Environmental Assessment" means the document titled Detroit River International Crossing Study, December 2008 and its various appendices;

"initial construction" means construction activities associated with Bridge No. 13 and Bridge No. 14 and associated noise mitigation along the easterly end of the study area adjacent to Southwood Lakes Community, from Howard Avenue to North Talbot Road as identified in the map entitled "Windsor-Essex Parkway in Area of Initial Construction" attached hereto and incorporated into this approval as Schedule A;

"MNR" means the Ontario Ministry of Natural Resources;

"MNR District Manager" means District Manager of the MNR's Aylmer District Office;

"ministry" means the Ministry of the Environment;

"proponent" means the Ministry of Transportation;

"Regional Director" means the Director of the ministry's Southwestern Regional Office;

"undertaking" means the Windsor-Essex Parkway and Windsor-Essex Parkway related facilities as defined in the Environmental Assessment.

1.0 General Requirements

- 1.1 The proponent shall comply with the provisions in the Environmental Assessment which are hereby incorporated in this approval by reference except as provided in these conditions and as provided in any other approval or permit that may be issued for the undertaking.
- 1.2 These conditions do not prevent more restrictive conditions being imposed under other statutes.
- 1.3 The proponent, during detail design and construction of the undertaking, shall comply with the provisions for Group A Projects identified in the Ministry of Transportation Class Environmental Assessment for Provincial Transportation Facilities.
- 1.4 Any refinements to the alignment and to the right-of-way of the undertaking shall be done in accordance with section A.2 of the Environmental Assessment and the requirements of the Ministry of Transportation Class Environmental Assessment for Provincial Transportation Facilities, as may be amended from time to time.

2.0 Public Record

- 2.1 Where these conditions require the submission of a document that is required for the public record, the proponent shall provide two copies of the document to the Director: a copy for filing within the specific public record file maintained for the undertaking and a copy for staff use.
- 2.2 As appropriate, additional copies of such documents will be provided to the:
 - (a) Regional Director;
 - (b) Clerk of the Town of Tecumseh;
 - (c) Clerk of the Town of LaSalle; and/or
 - (d) Clerk of the City of Windsor.
- 2.3 The file number EA 02 07 shall be quoted on all documents required to be submitted to the ministry.

3.0 Compliance Monitoring Program

- 3.1 The proponent shall prepare and submit to the Director for review an Environmental Assessment compliance monitoring program.
- 3.2 The compliance monitoring program shall be submitted no later than one year from the date of this notice, or no later than 60 days before the commencement of construction, including initial construction, whichever is earlier.
- 3.3 The compliance monitoring program shall include monitoring of the proponent's fulfilment of the provisions of the Environmental Assessment, including mitigation measures, public consultation, additional studies and work to be carried out, and of all other commitments made during the Environmental Assessment process.

- 3.4 The compliance monitoring program must contain an implementation schedule for monitoring the fulfilment of the provisions of the Environmental Assessment.
- 3.5 A statement must accompany the compliance monitoring program when submitted to the Director, indicating that the compliance monitoring program is intended to fulfil this condition of approval.
- 3.6 The Director may make amendments to the compliance monitoring program.
- 3.7 The compliance monitoring program, as it may be amended by the Director, must be carried out by the proponent.
- 3.8 The proponent may, in consultation with the Director, make amendments to the compliance monitoring program.
- 3.9 The proponent shall make the compliance monitoring program, including any amendments made to it, available to the ministry or its designate upon request in a timely manner when so requested by the ministry during an inspection, audit, or response to a pollution incident report or when information concerning compliance is requested by the ministry.

4.0 Compliance Reporting

- 4.1 The proponent shall prepare annual compliance reports which describe the proponent's compliance with the conditions set out in this notice and the results of the compliance monitoring program.
- 4.2 The proponent shall submit a compliance report to the Director on an annual basis until all conditions set out in this notice are satisfied, with the first compliance report being submitted no later than one year following the date of this notice. Each compliance report shall cover the previous 12 month period.
- 4.3 When all conditions set out in this notice have been satisfied, the proponent shall indicate in the compliance report following satisfaction that the compliance report is the final compliance report.
- 4.4 The proponent shall make all compliance reports available to the ministry or its designate upon request in a timely manner if requested by the ministry during an inspection, audit, or in response to a pollution incident report or when information concerning compliance is requested by the ministry.

5.0 Complaint Protocol

- 5.1 The proponent shall prepare and develop a protocol on how it will deal with and respond to inquiries and complaints received during the construction and operation of the undertaking.

5.2 The proponent shall submit the protocol to the Director for review and placement in the public record.

6.0 Construction Contracts

6.1 In carrying out the undertaking, the proponent shall ensure that as appropriate, contractors and subcontractors:

- (a) Adhere to commitments made by the proponent during the Environmental Assessment process, including those made in the Environmental Assessment and in the proponent's responses to comments made during the Environmental Assessment comment periods;
- (b) Meet applicable regulatory standards, regarding construction, operation and maintenance of the undertaking; and
- (c) Obtain any necessary approvals, permits or licenses.

7.0 Contaminated Materials

7.1 If contaminated materials are encountered during construction, the proponent shall ensure that management of the contaminated materials is consistent with ministry guidelines and legislation.

7.2 If contaminated materials are encountered during construction, the proponent shall contact the ministry (Windsor Area Office) prior to continuing with construction to confirm compliance with ministry legislation and guidelines.

8.0 Surface Water Monitoring

8.1 Before commencing initial construction, the proponent shall identify the areas, if any, within which the undertaking may affect surface water.

8.2 The proponent shall prepare and submit to the Regional Director for review and comment a surface water monitoring plan for the areas within which the undertaking may affect surface water as identified in accordance with condition 8.1. The proponent shall submit the plan at least three months before commencing construction within any of the areas identified in accordance with condition 8.1.

8.3 The surface water monitoring plan shall identify monitoring parameters, locations and frequencies and include the requirement for interpretive report(s) prepared by a Qualified Person.

8.4 The proponent shall collect baseline data on surface water quality within the areas identified in accordance with condition 8.1. Baseline data shall be collected during the 12 months before commencement of construction and during the 12 months following the end of construction.

8.5 Following completion of the surface water monitoring required by condition 8.4, the proponent shall submit a report to the Regional Director outlining the results of the surface water monitoring program. As required, the monitoring results shall include a discussion of the adequacy and success of erosion and sedimentation control measures during construction based on surface water impacts.

9.0 Human Health

9.1 The proponent shall prepare workplans for conducting focussed assessments of risks to human health associated with the construction of the undertaking.

9.2 The proponent shall submit the focussed risk assessment workplan for initial construction to the Director for review and comment as soon as possible after the date of this approval.

9.3 The proponent shall submit the focussed risk assessment workplan for the construction of the remainder of the undertaking to the Director for review and comment within one year of the date of this approval.

9.4 The proponent shall carry out the requirements contained in the focussed risk assessment workplans.

9.5 No later than 45 days before commencing initial construction, the proponent shall submit the results of the risk assessment for initial construction to the Director for review and comment.

9.6 No later than 3 months before construction (other than initial construction), the proponent shall submit the results of the risk assessment for the construction of the undertaking (other than for initial construction) to the Director for review and comment.

10.0 Landscape Plan

10.1 The Landscape Plan identified in Section 10.7 of the EA shall be prepared by the proponent in consultation with the MNR. A Landscape Plan shall be prepared for each stage of the project, and shall be provided to the MNR District Manager for review and comment no later than 90 days prior to construction of the applicable stage.

10.2 The portions of the Landscape Plan(s) dealing with ecological protection, restoration and enhancement are subject to review and comment by the MNR District Manager.

10.3 The Landscape Plan(s) shall contain, at a minimum, the following:

- (a) A Monitoring and Adaptive Management Protocol;
- (b) Strategies for minimizing impacts to natural heritage features;
- (c) Details of restoration measures; and

(d) Identification of measurable indicators that can be used to report progress towards desired targets.

- 10.4 The Landscape Plans must reflect any relevant conditions of any permit obtained in respect of the undertaking under the *Endangered Species Act, 2007*.
- 10.5 As part of the annual compliance report required by condition 4.1, the proponent shall include a discussion of the impacts of the undertaking on identified natural heritage features and their functions and whether the proposed mitigation measures in the Environmental Assessment have yielded expected results and what approaches have been used to address failures.
- 10.6 The requirement for Landscape Plans set out in condition 10.1 does not apply to initial construction works not affecting critical natural heritage elements.

11.0 Compensatory Mitigation

- 11.1 During the detail design phase, the proponent shall identify whether any designated natural heritage features and rare ecological communities and their functions will be lost due to the construction and/or operation of the undertaking.
- 11.2 The proponent shall determine how it will restore and/or replace any identified designated natural heritage features and rare ecological communities, including an identification of what restorative/replacement techniques the proponent will use and at which locations.
- 11.3 The proponent shall provide the information required by conditions 11.1 and 11.2 to the MNR District Manager for review and comment.
- 11.4 Prior to removing a rare community, the proponent shall, in consultation with the MNR, determine the sufficiency of the proposed restorative techniques including the identification of compensation lands.

12.0 Major Biological Feature

- 12.1 During the construction of the undertaking, including initial construction, if the proponent or the MNR identifies a new major biological feature upon which the undertaking may have adverse environmental effects, the proponent shall, in consultation with the MNR and any other directly affected agencies and stakeholders, determine the responses, if any, that would prevent, change, mitigate or remedy the adverse environmental effects.
- 12.2 In consultation with the MNR, the proponent shall evaluate the range of possible responses developed in accordance with condition 12.1 and determine which is the preferred response.
- 12.3 Prior to undertaking any work that could affect a new major biological feature, the proponent shall prepare and submit to the MNR a report describing the biological feature, the range of responses evaluated, the preferred response, and the results of any consultation that was carried out.

13.0 Ojibway Prairie Wetland Complex

- 13.1 The proponent shall identify the potential impacts (direct and indirect) of the construction and operation of the undertaking on the Ojibway Prairie Wetland Complex during the detail design phase for the portion of the undertaking that would cross the wetland.
- 13.2 The proponent shall develop mitigation measures for any potential impacts to the wetland as part of detail design.
- 13.3 The proponent shall provide the information required under conditions 13.1 and 13.2 to the MNR District Manager and Transport Canada for their review and comment prior to construction in any part of the wetland.

Dated the 11th day of August 2009 at TORONTO.



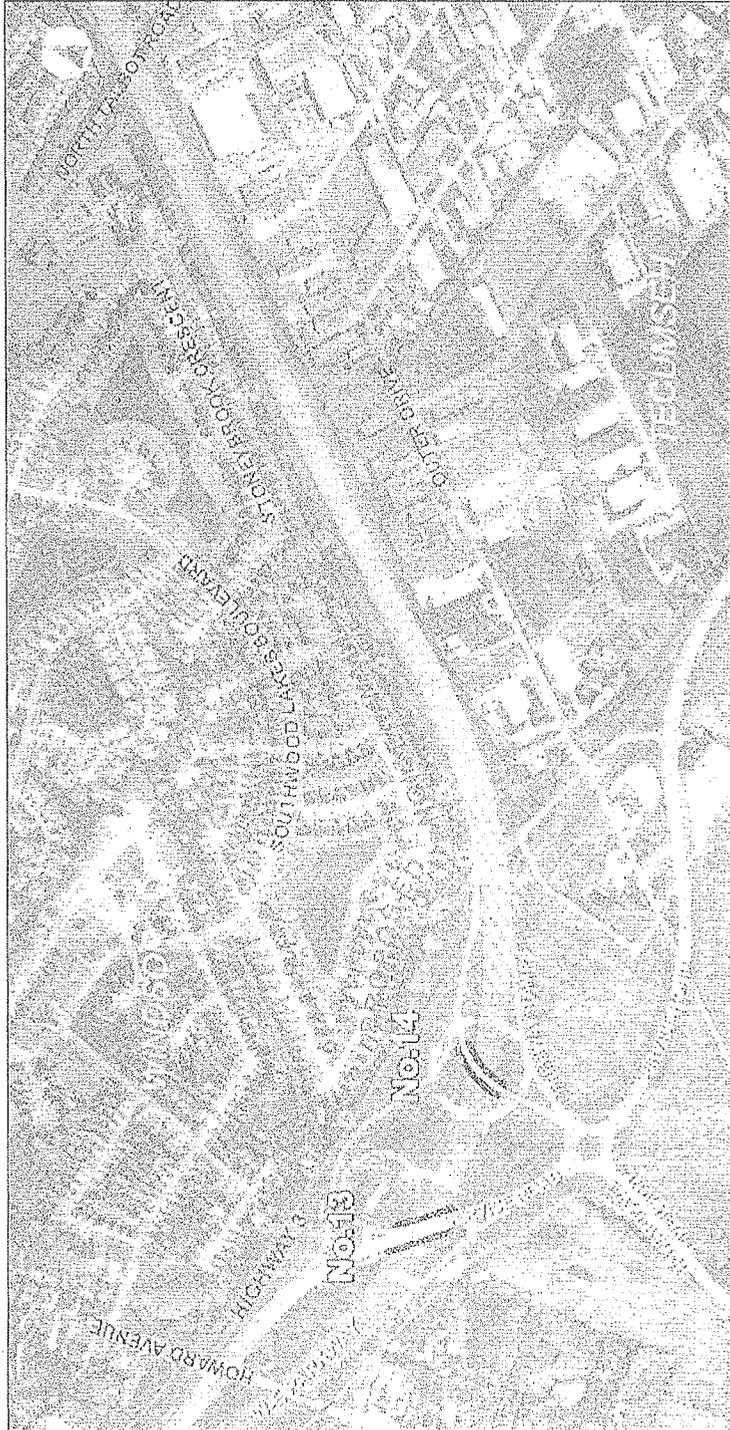
Minister of the Environment
135 St. Clair Avenue West, 12th Floor
Toronto, Ontario
M4V 1P5

Approved by O.C. No. 1457/2009

Date O.C. Approved Aug 21, 2009



Schedule A
Windsor-Essex Parkway in Area of Initial Construction



Canada

URS