

May 3, 2010

Members of the Michigan Legislature

Re: Sierra Club of Canada ats Attorney General of Canada et al.  
Our File P1003

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Thank you for the opportunity to address on you this issue.

On December 31, 2009, Sierra Club of Canada initiated a judicial review of the decision of various Ministers of the federal government under the *Canadian Environmental Assessment Act* (CEAA) that the proposed Detroit River International Crossing “is not likely to cause significant adverse environmental effects”.

The main issues of concern for Sierra Club of Canada include

- (1) The need for the project.
- (2) The failure of the government to properly consider alternatives to the bridge.
- (3) The harm to numerous species, both animal and vegetative, including and threatened endangered species protected under federal and provincial legislation.

Regarding need, the Government of Canada has indicated several justifications for need. Regarding need to accommodate increased traffic, it is the view of Sierra Club of Canada that the Government of Canada made an error in law by failing to properly consider relevant information as it relates to the need for anticipated increased border traffic. In particular, it has failed to acknowledge and properly consider the significant decline in traffic in its studies.

Regarding alternatives, it is the position of Sierra Club of Canada that had the alternatives been explored properly, the conclusion that a new bridge was necessary again would have failed, even if there was increased traffic. Sierra Club Canada believes that existing infrastructure, as it exists or is expected to be improved, could accommodate the current and future needs for cross-border traffic. This infrastructure includes projects related to inter-modal and railway improvements, and improvements to other crossings. These alternatives are expected to do so without the significant anticipated environmental effects that DRIC would result in or which require mitigation.

Finally, of greatest concern to Sierra Club of Canada is the impact on species. Sierra Club of Canada believes that the Government of Canada has failed to apply the precautionary principle as required under CEAA on several levels, including that it has proposed mitigation strategies that are in some cases not proven; that there was a failure to identify species in the relevant areas; or that the

ILER CAMPBELL LLP

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Ministers failed to provide a rationale for the conclusion that the project is not likely to cause significant environmental effects.

Again, thank you for the opportunity to comment on this issue.

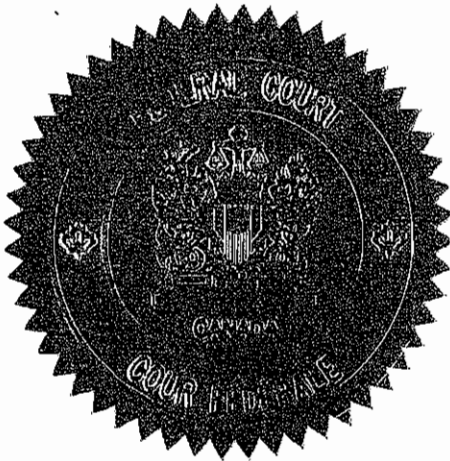
Yours truly,

**ILER CAMPBELL LLP**

A handwritten signature in black ink, appearing to read "Paula Boutis". The signature is fluid and cursive, with a large initial "P" and "B".

Paula Boutis

E-mail: [pboutis@ilercampbell.com](mailto:pboutis@ilercampbell.com)



No. 7-2192-09

FEDERAL COURT - TRIAL DIVISION

SIERRA CLUB OF CANADA

Applicant

- and -

THE ATTORNEY GENERAL OF CANADA and  
THE MINISTER OF FISHERIES AND OCEANS, THE MINISTER OF TRANSPORT, THE  
MINISTER OF THE ENVIRONMENT, WINDSOR PORT AUTHORITY,  
and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Respondents

APPLICATION PURSUANT TO sections 18, 18.1, and 18.2 of the *Federal Court Act*

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the Applicants. The applicant requests that this appeal be heard at Ottawa, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Court Rules, 1998*, and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant WITHIN 10 DAYS of being served with this notice of application.

Copies of the *Federal Court Rules, 1998*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: December 31, 2009

Issued by:

(Registry Officer)



**V. WONG**  
**REGISTRY OFFICER**  
**AGENT DU GREFFE**

Address of local office: 180 Queen Street West  
Suite 200  
Toronto, ON M5V 3L6

TO: **The Attorney General of Canada**  
c/o Department of Justice Canada  
PO Box 36, Exchange Tower  
3400-130 King St. West  
Toronto, Ontario M5X 1K6

AND TO: **The Minister of Environment**  
284 Wellington Street  
East Memorial Bldg, 4<sup>th</sup> Floor  
Ottawa, Ontario  
K1A 0H8

AND TO: **The Minister of Transport**  
Transport Canada  
330 Sparks Street

Ottawa, Ontario  
K1A 0N5

AND TO: **The Minister of Fisheries and Oceans**  
Fisheries and Oceans Canada  
200 Kent Street  
Ottawa, Ontario  
K1A 0E6

AND TO: **Windsor Port Authority**  
251 Goyeau Street  
Suite 502  
Windsor, ON N9A 6V2

AND TO: **Her Majesty the Queen in Right of Ontario**  
c/o Ministry of the Attorney General  
McMurtry-Scott Building  
720 Bay Street, 11th Floor  
Toronto, ON M5G 2K1

## APPLICATION

This is an Application for Judicial Review in respect of:

1. The course of conduct and failure of the Respondent Federal Ministers and the Windsor Port Authority, (the **Federal Respondents**) to fulfill their statutory duties under the *Canadian Environmental Assessment Act* (CEAA), by permitting the "Detroit River International Crossing" Project (DRIC Project) to be carried out, by deciding under section 20(1)(a) of CEAA, that the DRIC Project "is not likely to cause significant adverse environmental effects", such decision being communicated to the Applicant by way of publication on the CEAA registry on December 3, 2009.
2. The authorization(s) and/or permit(s), if any, including those issued under the *Fisheries Act*, *Navigable Waters Protection Act*, the *Species at Risk Act* (SARA), and the *Endangered Species Act*, in respect of the whole or any part of the DRIC Project or related Undertakings.
3. Upon the request of counsel, such further and other legal actions or decisions so integrally related to this Application that, in the interests of justice, this Honourable Court finds them to be necessarily part of this application.

The applicant makes application for:

4. An interim order in the form of an injunction restraining or suspending the decision of any Minister to issue any authorization(s) or further authorization(s) and/or permit(s) and enjoining the

construction of all or part of the DRIC Project until the final resolution of the issues raised in this Application.

5. An order or orders:

- (a) Declaring that the environmental assessment for the DRIC Project established under CEAA failed to comply with the CEAA and the Canada-Ontario Agreement on Environmental Assessment Cooperation and that the course of action taken and decision by the Federal Respondents under CEAA authorizing the DRIC Project to proceed on the basis that the Project is not likely to cause significant adverse environmental effects, is invalid and unlawful;
- (b) Declaring that the screening report and recommendations concerning the Project in the Canadian Environmental Assessment Act Screening Report CEAR No: 06-01-18170, Detroit International Crossing Study, dated November 2009 (**Report**), failed to comply with CEAA and is therefore invalid and unlawful;
- (c) Declaring that the requirements of CEAA must be complied with before any of the Respondents issue any authorization(s) and/or permit(s), including but not limited to those permit(s) and/or authorization(s) under the *Fisberies Act*, *Navigable Waters Protection Act*, SARA, and the *Endangered Species Act*, or before any of the Respondents

take any action for the purpose of enabling the DRIC Project to proceeding in whole or in part;

- (d) Prohibiting any of the Respondents from issuing any authorization(s) and/or permit(s) including but not limited to the *Fisheries Act*, *Navigable Waters Protection Act*, and SARA, the *Endangered Species Act*, or taking any other action for the purpose of enabling the DRIC Project to proceed in whole or in part.
- (e) Quashing or setting aside any authorization(s), permit(s) and/or approval(s) that may be issued, prior to the hearing of this matter, by any of the Respondents under any statute including but not limited to the *Fisheries Act*, SARA, the *Navigable Waters Protection Act*, and the *Endangered Species Act* for the purposes of enabling the DRIC Project to proceed in whole or in part; and

6. An order that the Applicant shall not be required to pay costs to the Respondents of this Application, pursuant to Rule 400 of the *Federal Court Rules*, in the event that the application is dismissed.

7. Such further and other relief as this Honourable Court may deem just.



## The Parties

### A. The Applicant

8. The Applicant has been active on environmental issues in Canada since 1963 and was incorporated as a federal corporation without share capital in 1992.

9. The Applicant is concerned about the environmental effects of the DRIC Project and the lawful application of CEAA to the DRIC Project and to all other infrastructure projects in Canada. The Applicant has no personal, proprietary or pecuniary interest in the outcome of this Application and has a lengthy record of working to ensure that the federal government implements the requirements of CEAA along with ensuring the protection of the natural environment including promoting an ecosystem approach and endorsing compliance with the precautionary principle.

10. The DRIC Project represents the largest infrastructure project undertaken by the Federal and Provincial governments. The DRIC Project is being undertaken by Transport Canada, together with its partners the Ontario Ministry of Transportation, the Michigan Department of Transportation and US Federal Highways Administration (the **Border Transportation Partnership**). The Applicant is of the view that the federal government is required to ensure that the requirements under CEAA and other applicable environmental laws required to be considered under the scope of the review be met and implemented in accordance with the principles established by the statutory framework and upheld by the Supreme Court of Canada.

11. The Applicant believes that it needs to bring this Application to address the federal government's failure to implement CEAA and other applicable law to ensure the protection of species and critical habitat necessary for the survival and recovery of threatened, endangered and species-at-risk. The Applicant believes that an Order requiring that CEAA be complied with is in the public interest because the protection of Canada's biodiversity is a matter affecting all Canadians.

#### B. The Respondents

1.

12. The DRIC Project is subject to an environmental assessment under CEAA.

13. The Minister of Environment has statutory responsibilities for the environmental assessment of the DRIC Project pursuant to CEAA.

14. Fisheries and Oceans Canada ("DFO") determined itself to be a "Responsible Authority" under CEAA responsible for preparing a federal environmental assessment for the DRIC Project. DFO's role as a Responsible Authority arises from authorization(s) that may be required under section 35 of the *Fisheries Act*, to harmfully alter and/or destroy fish habitat. Pursuant to the requirements of CEAA and the associated regulations, the DFO is responsible for ensuring that an environmental assessment of the DRIC Project is undertaken in compliance with CEAA prior to issuing any *Fisheries Act* authorization(s).

15. Transport Canada determined itself to be a "Responsible Authority" under CEAA responsible for preparing a federal environmental assessment for the DRIC Project. Transport Canada's role as a

Responsible Authority arises because it is a proponent of the DRIC Project. Transport Canada may also provide financial assistance to the DRIC Project and the DRIC Project will require authorization under the *Navigable Waters Protection Act*.

16. The Windsor Port Authority (WPA), as either a Responsible Authority or Prescribed Authority, has statutory responsibilities for the environmental assessment of the DRIC Project pursuant to CEAA and the *Canada Port Authority Regulations* as it relates to the terms of any lease agreements with the Windsor Port Authority or as it relates to any permits to be issued by the Windsor Port Authority pursuant to the *Canada Marine Act* for the DRIC Project.

17. Her Majesty the Queen in Right of Ontario, through the Ontario Ministry of Transportation (MTO), is a co-proponent of the DRIC Project, and will be directly affected by the order or orders sought in the application. The Responsible Authorities delegated to the MTO and the consultant team the coordination and development of technical support studies for the environmental assessment, the development and implementation of a public consultation program, and the preparation of the Report.

**The grounds for the application are as follows:**

18. The proponent, Transport Canada, described the DRIC Project as follows:

- (a) a six lane international bridge crossing the Detroit River;
- (b) a Border Services Plaza; and

- (c) a controlled access highway connection approximately 10 kilometres long located between the Border Service Plaza and the provincial highway network.

19. Notice of Commencement of the federal environmental assessment was posted to the CEAA Registry on or about March 22, 2006, followed by several updates, with the last updated Notice posted on February 10, 2009.

20. On or about November 2006, Transport Canada and Windsor Port Authority deemed themselves to be Responsible Authorities and/or are Prescribed Authorities under the CEAA charged with preparing a federal environmental assessment of the DRIC Project.

21. On or about February 2009, the Department of Fisheries and Oceans deemed itself to be a Responsible Authority under CEAA responsible for preparing a federal environmental assessment of the DRIC Project. Transport Canada, Department of Fisheries and Oceans and the Windsor Port Authority are all considered Responsible Authorities and/or Prescribed Authorities under the CEAA.

22. In accordance with the statutory requirements under CEAA and its associate regulations, the Responsible Authorities and/or Prescribed Authorities must prepare an environmental assessment of the DRIC Project in compliance with the CEAA prior to the issuance of any authorization(s) and/or permit(s), including under SARA, the *Fisheries Act* and the *Navigable Waters Protection Act*.

### Grounds for Review

The Respondents erred in law and/or jurisdiction by failing to comply with CEAA, including sections 2, 4 and 16, and 17 of the CEAA. Without limiting the generality of the foregoing, the Respondents erred by:

- (a) Failing to demonstrate a need for the DRIC Project;
- (b) Failing to consider the environmental and cumulative effects of the DRIC Project, the significance of those effects,
- (c) Failing to consider the existence of alternative methods of meeting the needs of the DRIC Project, and alternatives to the DRIC Project, that would avoid the significant environmental effects caused by the DRIC Project;
- (d) Incorrectly interpreting the terms “mitigate” and “mitigation” and failing to examine the environmental effects of the DRIC Project and mitigation measures simultaneously;
- (e) Incorrectly or unreasonably relying on uncertain and undetermined future actions by the federal and provincial governments to mitigate the significant environmental effects of the DRIC Project, when such future actions may not be “technically and

economically feasible” measures that would effectively mitigate the significant environmental effects of the DRIC Project;

- (f) The conclusion by the Federal Respondents that the DRIC Project will have no significant environmental effects is premised on the Federal Respondents reliance on other parties to implement mitigation measures and recommendations at an undetermined time in the future. Such reliance is based on an incorrect interpretation of the Federal Respondents’ duties’ under CEAA and its regulations, SARA, *Fisheries Act*, *Navigable Waters Protection Act* and is unreasonable based on the record and based on their own findings and documentation.
- (g) Neglecting to take into consideration transboundary impacts of the DRIC Project;
- (h) Neglecting to uphold and apply the precautionary principle to the DRIC Project as committed to by Government of Canada and set out in the *United Nations Convention on the Conservation of Biological Diversity*, and as stated in CEAA and other relevant legislation;
- (i) Failing to consider any change the DRIC Project may cause to a wildlife species listed under SARA, its critical habitat or the residences of individuals of that species; or failing to protect species that are at risk and their habitats, and to promote the recovery of species that are at risk under the *Endangered Species Act*;

- (j) Relying on incomplete information and research in either purposely or unintentionally limiting the number of species and their associated habitat impacted by the DRIC Project, and as a result failing to identify numerous other endangered, special concern, threatened and species-at-risk that are impacted by the DRIC Project;
- (k) Failing to provide any rationale or justification for the conclusion that the effects of the DRIC Project on the numerous species and their habitat would not be significant or could be mitigated, in spite of having insufficient information about the environmental effects of the DRIC Project on the numerous species impacted by the DRIC Project, and in spite of uncertainties about the availability and effectiveness of mitigation measures;
- (l) Failing to provide any rationale or justification for the conclusion that potential future actions of the federal and provincial governments would mitigate the DRIC Project's significant environment effects.
- (m) Failing to take into consideration the impact of the DRIC Project and its location in close proximity to one of Ontario's most environmentally diverse areas and numerous natural areas including but not limited to: the Black Oak Woods, Ojibway Park Areas of Natural and Scientific Interest, a natural heritage site, and the Detroit

River Canadian Heritage River, along with the natural corridors that are essential for the species movement and impact their genetic diversity;

- (n) In rendering its decision, the Federal Respondents erred in law and/or jurisdiction by failing to take into account relevant considerations, or by taking irrelevant considerations into account.
- (o) The Federal Respondents erred by taking a course of action pursuant to subsection 20(1) without ensuring that any duty or function delegated pursuant to subsection 17(1) was carried out in accordance with CEAA and the regulations.
- (p) Failing to provide a rationale in the screening report, and in particular failing to provide a rationale for their conclusion, that the DRIC Project will result in no significant environmental effects;
- (q) Such further additional grounds as counsel may identify and this Honourable Court may consider.

**This Application relies on the following statutes and rules:**

1. Federal Court Act, including ss.18, 18.1 and 18.2;
2. Federal Court Rules;



3. *Canadian Environmental Assessment Act* and regulations;
4. *Navigable Waters Protection Act*, and regulations;
5. *Fisheries Act*, and regulations;
6. *Species at Risk Act*, and regulations;
7. *Endangered Species Act*, and regulations; and
8. Such further and other provisions and rules as Counsel may advise and as this Honourable Court may permit.

**This application will be supported by the following material:**

1. The Minister's decision released December 3, 2009;
2. The Affidavit of Dan McDermott, to be served;
3. The Affidavit of Emma Cane, to be served;
4. Canadian Environmental Assessment Act Screening Report CEAR No: 06-01-18170,  
Detroit International Crossing Study, dated November 2009;
5. The record before the Responsible Authorities and/or Prescribed Authorities; and

6. Such further and other materials as counsel may advise and this Honourable Court may permit.

#### Rule 317 Request

The applicant requests that the Respondents send a certified copy of the following material that is not in the possession of the Applicant but is in possession of the Respondents, to the applicant, and to the Registry:

1. The record before the Responsible Authorities and/or Prescribed Authorities in making their decision under s.20(1)(a) of CEEA for the purpose of allowing the DRIC Project to proceed in whole or in part; and if not part of the record, any records, including but not limited to, memoranda, electronic mail, background studies and analyses, and field studies and results related to natural heritage, including studies related to the numerous species impacted by the DRIC Project, transboundary effects, cumulative effects, mitigation strategies, and alternatives to the DRIC Project, including the Planning and Needs Feasibility Study conducted by the Border Transportation Partnership.

2. The record before the Responsible Authorities and/or Prescribed Authorities in considering or issuing any authorizations, permits or licences, if any, for the purpose of allowing the DRIC Project to proceed in whole or in part.

Dated at Toronto this 31st day of December, 2009



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**Paula Boutis**  
Iler Campbell LLP  
890 Yonge St., Suite 700  
Toronto, Ontario  
M4W 3P4

Telephone: 416-598-0103 x 117  
Facsimile: 416-598-3484

Solicitor for the Applicant

Joint Submission  
to the Honorable Ontario Minister of the Environment John Gerretsen  
from  
Transport 2000 (Ontario)  
Transport 2000 (Canada)  
Citizens Environment Alliance (Windsor, ON)  
Michigan Environmental Council  
Transportation Riders United (Detroit, MI)  
Michigan Association of Railroad Passengers, Inc.\*\*\*

regarding  
**Detroit River International Crossing (DRIC) Project  
Environmental Assessment**  
prepared by Ontario Ministry of Transportation

29 May 2009

*submitted via:*  
Catherine McLennon, Special Project Officer  
Environmental Assessment and Approvals Branch  
Ontario Ministry of the Environment (MOE)  
416 – 314 – 8452 (fax)  
Catherine.McLennon@ontario.ca

Dear Mr. Gerretsen:

We are a coalition of three Canadian and three Michigan non-governmental organizations\*\*\* which have a common viewpoint regarding the environmental reviews done in both Ontario and Michigan for the DRIC highway project proposed by the Ontario Ministry of Transportation (OMOT) and the Michigan Department of Transportation (MDOT).

We believe that the DRIC Environmental Assessment (EA) prepared by the OMOT during January 2009 and the DRIC Final Environmental Impact Statement (FEIS) prepared by MDOT and the US government's Federal Highway Administration (FHWA) in December 2008 fail to meet the respective Canadian and US standards for such reviews. We consequently also disagree with the April 2009 Ontario MOE staff review which "...concludes that the EA was prepared in accordance with the approved Terms of Reference and the Environmental Assessment Act." [p1 of their report].

Some of us already have submitted specific comments to OMOT, MDOT, and the Ontario OMOE regarding the DRIC EA and the DRIC EIS completed in Ontario and Michigan respectively. Most of the detailed comments are included in the Canadian and

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\*\*\*As of 02 July 2009, the following additional organizations have endorsed this statement: Ontario Smart Growth Network; Sierra Club Michigan Chapter and its Southeast Michigan Group, on behalf of the Sierra Club (US); and Sierra Club Ontario Chapter. Their endorsements are attached.

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Re: DRIC EA  
Date: 29 May 2009

US reports sections of the DRIC project website, <http://www.partnershipborderstudy.com/> . Many of those comments are enumerated at the end of this submission to assist you in locating them in the event you wish to read them in detail. The prior comments are included within this submission by reference.

The purpose of this submission is to enumerate several important facts and to summarize the major deficiencies which justify both your rejection of the DRIC EA, as well as the US federal government's rescission of the DRIC EIS Record of Decision approval granted by the FHWA on 14 January 2009 (only 9 days after the 05 January 2009 deadline for submission of comments regarding the DRIC FEIS and only 6 days before the change in leadership of the US government).

We note that a number of groups on 14 May 2009 filed suit in the US District Court for the District of Columbia to overturn the DRIC EIS Record of Decision prepared and approved by the FHWA.

**(1) The DRIC Project's Canadian and US Proponents Advertised the Project as Mode-Neutral and Transformed it into a Highway Project.**

The DRIC EA's review of non-highway options to relieve border crossing congestion is minimal and is not analytical, notwithstanding the fact that the DRIC project was advertised as a mode neutral project in which all reasonable alternatives were to be evaluated.

For example, the Terms of Reference [TOR] approved by the Ontario MOE during 2004 specifically states the following:

*"As such, the Detroit River TOR is distinguished from previous TOR's in that it does not identify the undertaking or the study area, nor does it provide work plans to guide the activities to be undertaken..." [TOR p i [pdf 2]]*

In the US, the Executive Office of the President - Council on Environmental Quality regulations require the rigorous exploration and objective evaluation of all reasonable alternatives, including reasonable alternatives not within the jurisdiction of the lead agency [ref: 40 CFR 1502; see also ref (6), pp 3, 4, & 5] Accordingly, the scoping statement published during July 2005, reviewed at a meeting held on 31 August 2005, and approved by the US Environmental Protection Agency by letter dated 29 September 2005, similarly did not limit the options to highway alternatives.

Later, on 21 August 2007, Prime Minister Harper and President Bush in a Joint Statement stated that *"Canada and the US will maintain a high priority on the development of enhanced capacity of the border crossing infrastructure in the Detroit-Windsor region, the world's busiest land crossing."* The direction from the Prime

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Minister and the President was mode neutral. At no time have our national leaders mandated that the DRIC project study focus only on highway alternatives.

Notwithstanding all of the existing policies and representations made by MDOT and OMOT regarding a mode-neutral analysis, highway options were the only options seriously considered. Railroad and non-highway public transportation options for border crossing improvements between southeastern Michigan and southwestern Ontario were summarily disregarded without justification or were not even considered.

## **(2) Investment Required to Build the Proposed DRIC Highway Project**

Knowledge of the investment required for the proposed DRIC highway project is important in determining what alternatives to that project constitute reasonable alternatives.

We have had difficulty in ascertaining from the DRIC EA documentation the investment for the Canadian portion of the DRIC project.

The April 2009 Ontario MOE staff review of the DRIC EA is limited to the access road only and states that "...the estimated cost is approximately "\$1.86 billion (2011 Canadian dollars) [p. 5 last line + p. 6, line 1]. However, on 28 May 2009 Ontario MOE staff advised that the cost quoted in the Ontario MOE staff review is in error, that the correct cost estimate should have been reported as being \$1.6 billion, and that the cost is for the access road only.<sup>1</sup>

A draft DRIC working paper dated May 2008 states that the cost of the plaza at the Canadian end of the proposed bridge will be \$180 million. This working paper does not give any estimate for the cost of building the Canadian portion of the proposed Detroit River bridge.<sup>2</sup>

The FEIS published in December 2008 for the US portion of the DRIC highway project states that the US share of the DRIC highway project cost is \$1.81 billion (2008 US dollars, with inflation added assuming project completion in 2013). [p. ES-60] Of this amount approximately \$0.4 billion is for the bridge, excluding design costs. [p. ES-60].

Assuming that the Canadian share of the cost to construct the bridge over the Detroit River is identical to the US share, ignoring differences between the years for which the cost estimates apply, and assuming for the moment parity between the Canadian and US currencies, it appears the total cost of the project to the Canadian and US economies combined is approximately \$4 billion. Given that the project

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<sup>1</sup> Email dated 28 May 2009 from Catherine McLennon of Ontario MOE to Dietrich R. Bergmann, PhD, PE.

<sup>2</sup> The May 2008 report entitled "Preliminary Construction Cost Estimate Report for Practical Alternatives (Access Road and Inspection Plaza) -- available in the "Canadian Reports" section of the DRIC website and marked "DRAFT" states on page 17 (pdf 19) that type B Plaza cost is \$180 million (as of 2011).

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involves a six lane trans-border highway, the cost for each traffic lane is approximately \$670 million.

Note that the \$4 billion estimate does not include the costs of widening connecting highway in Canada and the US (eg, 401, I-75, and I-94).

### **(3) The Traffic Demand Forecasts Report**

After the DRIC Study "Terms of Reference" were approved [during 2004] in Ontario and after the US "Scoping Statement" was presented and discussed, the DRIC project team released a "Working Paper" dated September 2005 and entitled "***Detroit River International Crossing Study Travel Demand Forecasts***". This report, referred to hereinafter as the "TDF" is notable for the reason that it gives credibility for considering at least two non-highway alternatives to building a new Detroit River highway crossing.

The first non-highway alternative suggested by data in the TDF is enhanced public transportation between the Cities of Windsor and Detroit. The specific statistic cited in the TDF which gives credibility to enhanced public transportation being a reasonable alternative is the report's observation that 79% of the automobile crossings of the Detroit River during 2004 were for traffic that is local to the region encompassing Essex County in Ontario and the Detroit metro area in Michigan. [TDF, p29, Exhibit 3.13]. One such option could be a public transportation tunnel under the Detroit River that extends to Ouellette Avenue in Windsor and Woodward Avenue in Detroit. Although some might argue that a new tunnel exclusively for public transportation might be very costly, the cost of that tunnel very likely could be a very small fraction of the total cost of the highway option for the DRIC project, as described above.

The second non-highway alternative suggested by data in the TDF is enhanced intermodal service between Detroit or other points west and south of Detroit at the US end and the Greater Toronto Area (GTA) or other points east of the GTA at the Canadian end. The TDF reveals that 44% of the total truck traffic using the Ambassador Bridge is divertible to intermodal rail. [ref: TDF, pp 122 and 123].

The DRIC study traffic forecasts for the planning horizon year, 2035, suggest that 200 trucks will leave GTA every hour for a trip to Detroit, and vice versa. If that traffic volume is correct, it would fill a freight train with space for 100 trailers leaving each end of the route every 30 minutes around the clock.

The January 2003 issue of Railway Age contained an article which stated that the Canadian Pacific Railroad "...has proposed a \$2 billion public/private partnership with the Canadian and Ontario governments to double-track the entire Montreal-Detroit corridor and replace CP's former New York Central Detroit River Tunnel."

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Toronto is approximately 370 km (230 miles) from Detroit and approximately 550 km (340 miles) from Montreal. It appears that approximately \$1 billion of the investment proposed by CP would be for the segment between Toronto and Detroit.

Regrettably, the TDF states that intermodal rail will not achieve its potential for the following three reasons: *"low margins; a lack of capacity on the mainline through Southwestern Ontario (a single track line); and problems with US immigration with respect to Canadian drivers delivering trailers from the Detroit yard."* [TDF, p. 41]

It appears to us that the three reasons stated within the TDF for disregarding the intermodal rail option are unjustified, for the reason that the total investment required to rectify the problems specified in the TDF very likely is a small fraction of the anticipated budget for the proposed DRIC highway project.

Because the DRIC EA did not objectively evaluate reasonable public transportation alternatives and intermodal rail alternatives as described above, the EA does not meet the standard required of it by the Ontario Environmental Assessment Act and also by the Terms of Reference.

We consequently believe you are required to "...refuse to give approval to proceed with the undertaking.", per Section 9(1)(c) of the Province's Environmental Assessment Act.

**(4) There is no Need to Construct the DRIC Highway Project Now**

Your refusal to give approval to proceed with the undertaking will not wreak havoc on the trans-border crossings in Sarnia and Windsor. There are two reasons for this assertion.

First, trans-border traffic growth as anticipated by the DRIC project team in 2005 has failed to materialize. In prior submittals some of us have noted that fact and have faulted OMOT and MDOT for having failed to adjust their forecasts of traffic. We shall not elaborate on those points here.

The second reason is that the DRIC project's TDF report described above notes that the public has a bias in favor of crossing the international border at Windsor/Detroit rather than at Sarnia/Port Huron. The TDF report notes that the date a new highway crossing at Windsor/Detroit is needed will be delayed by **six years** if a way is found to eliminate the bias in favor of using the Windsor/Detroit crossings.. [TDF, p. 124]

The public's bias in favor of using crossings at Windsor is understandable inasmuch as until recently little or no information has been presented to westbound motorists traveling from London or Toronto on 401 of the advantages of using 402 to enter the US. Also, on the US side of the border no information regarding the Blue Water Bridge is given to travelers approaching Detroit on I-75 and I-94 from the south



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Date: 29 May 2009

and west respectively. The public simply does not recognize that the incremental travel distance for a trip from downtown Detroit to London or the GTA is only 20 km (12.5 miles) longer if one travels via the Blue Water Bridge rather than the Windsor-Detroit Tunnel or the Ambassador Bridge. Because travel through the Windsor-Detroit Tunnel or the Ambassador Bridge requires travel in city traffic once one arrives in Windsor, a trip from downtown Detroit to London or Toronto via the Blue Water Bridge can be only about 5 minutes longer than making the same trip via either highway crossing in Detroit.]

The cure for eliminating the bias is to market the use of the Blue Water Bridge. One step for doing that is to improve and increase information signs along westbound 401 as travelers approach the 402 interchange, and along northbound I-75 and eastbound I-94 as travelers approach Detroit.

**(5) The Proposed Scope for Your Review of the DRIC EA is too Narrow**

The April 2009 Ontario MOE staff review of the DRIC EA states that you will be reviewing the EA as it applies only to "the proposed undertaking defined as the Windsor-Essex Parkway portion of the Detroit River International Crossing (DRIC) Project" [p.1; Section entitled "What"].

That limitation of your review seems unfortunate for the simple reason that the lion's share [\$1.6 billion] of the part of the DRIC project located in Canada is a provincial project and the smaller share [\$0.58 billion] is a federal project.

Are you to assume that the major increases in traffic from the border to Highway 401 are a given? We think you should not accept that traffic as a given, for a variety of reasons. For example, the additional traffic stands to have major impacts on 401 along the entire distance between Windsor and the GTA. Those impacts include all of the following, if not now, certainly at some time in the future before the year 2035 planning horizon: increased noise emissions, increased air pollution, increased global warming emissions and pavement widenings. As noted above, much or most of the adverse environmental consequences of the proposed DRIC highway project can be avoided by diverting to intermodal rail the truck traffic having a trip end in or east of the GTA.

Ontario's Environmental Assessment Act requires in Section 6.1(2) that the EA evaluate "...*alternative methods of carrying out the undertaking and the alternatives to the undertaking*". Regrettably, OMOT reviewed only alternative highways to their proposed highway undertaking, and did not review alternative methods (i.e., non-highway options) to the proposed highway undertaking. It is appropriate for you to insist that the shortcoming of OMOT's review be corrected.

In the case of freight transport, the DRIC project team's traffic forecasts appear to imply a truck traffic volume between Detroit and the GTA of 200 trucks per hour per direction every day during year 2035. Noise and exhaust emissions along the entire route will increase considerably from what they would be were traffic to remain at

To: Hon Ontario Minister of the Environment John Gerretsen  
Re: DRIC EA  
Date: 29 May 2009

present levels. Transferring the truck traffic having a trip end in or east of Toronto to intermodal rail has the potential of reducing by 75 to 90% all of the following for the truck traffic transferred to intermodal rail: fuel consumption, exhaust emissions, global warming emissions. It is in the Province of Ontario's interest to evaluate the intermodal rail option.

### **Closure**

In conclusion, the Governments of Ontario and Michigan have before them an opportunity to do their environmental reviews for the DRIC project properly. Doing the reviews properly would involve a rigorous evaluation of both enhanced Windsor-Detroit public transportation services and also enhanced transborder intermodal rail services between the GTA and Detroit. The combined cost of these two non-highway alternatives stands to be far less than the cost to the Canadian and US taxpayers and toll-road payers to build and operate the proposed DRIC highway project. And the environmental benefits of the two non-highway alternatives stand to be much greater than for the proposed DRIC highway project.

A new dedicated public transport tunnel between the Windsor and Detroit central business districts stands to increase the vitality of both city centers and could well become a tourist attraction in itself. Further, a new public transportation tunnel stands to benefit the highway mode by removing peak hour commuters from especially the Ambassador Bridge.

An expanded intermodal service across southwestern Ontario which connects the US with GTA and points east could emulate and expand on what already is in place on various routes in west Europe and in the State of Virginia's. A southwestern Ontario intermodal service could become the premier short-haul intermodal route in the world.

The citizens of Ontario and Michigan deserve far better than what the Ontario and Michigan transportation agencies have given them in an unnecessarily long and costly process that has been more of a promotion effort than an analytical environmental review. It is time that the Ontario and Michigan transportation agencies begin to adapt to the circumstances in which Ontario and Michigan find themselves and to cease foisting on the public sprawl-inducing megahighway projects with minimal justification.

Respectfully,

**Natalie Litwin**, President  
Transport 2000 (Ontario)  
[n.litwin@sympatico.ca](mailto:n.litwin@sympatico.ca)  
phone: 416-498-0612

**David Jeanes**, President\_  
Transport 2000 (Canada)  
[djeanes@magma.ca](mailto:djeanes@magma.ca)  
phone: 613-725-9484

To: Hon Ontario Minister of the Environment John Gerretsen  
Re: DRIC EA  
Date: 29 May 2009

**Frank Butler**, President  
Citizens Environment Alliance  
[FButler@whsc.on.ca](mailto:FButler@whsc.on.ca)  
phone: 519-973-0978

**Tim Fischer**, Deputy Policy Director  
Michigan Environmental Alliance  
[Tim@EnvironmentalCouncil.org](mailto:Tim@EnvironmentalCouncil.org)  
phone: 517-487-3606 x12

**Megan Owen**, Executive Director  
Transportation Riders United  
[mowens@detroittransit.org](mailto:mowens@detroittransit.org)  
Phone: 313-963-8872

**John D. DeLora**, Chair  
Mich Assoc of Railroad Passengers, Inc.  
[idelora@wowway.com](mailto:idelora@wowway.com)  
phone: 313-575-6608

Selected References:

- (1) Transport 2000 (Ontario) comments submitted to Ontario MOE on 03 March 2009  
[not shown on DRIC website, but included in Ontario MOE record for DRIC EA]
- (2) Citizens Environment Alliance comments submitted to MDOT on 29 May 2008  
[http://www.partnershipborderstudy.com/pdf/DRIC\\_DEIS\\_Written\\_Comments\\_by\\_Advocacy\\_Groups\\_Churches\\_&Non-Profit\\_Agencies.pdf](http://www.partnershipborderstudy.com/pdf/DRIC_DEIS_Written_Comments_by_Advocacy_Groups_Churches_&Non-Profit_Agencies.pdf) (p. 16)
- (3) Michigan Environmental Council comments submitted to MDOT on 28 May 2008  
[http://www.partnershipborderstudy.com/pdf/DRIC\\_DEIS\\_Written\\_Comments\\_by\\_Federal-State-Local\\_Public\\_Agencies.pdf](http://www.partnershipborderstudy.com/pdf/DRIC_DEIS_Written_Comments_by_Federal-State-Local_Public_Agencies.pdf) (pp 38-41)
- (4) Transportation Riders United comments submitted to MDOT on 92 May 2008  
[http://www.partnershipborderstudy.com/pdf/DRIC\\_DEIS\\_Written\\_Comments\\_by\\_Advocacy\\_Groups\\_Churches\\_&Non-Profit\\_Agencies.pdf](http://www.partnershipborderstudy.com/pdf/DRIC_DEIS_Written_Comments_by_Advocacy_Groups_Churches_&Non-Profit_Agencies.pdf) (pp 19-20)
- (5) Michigan Association of Railroad Passengers comments submitted to MDOT on 29 May 2008  
[http://www.partnershipborderstudy.com/pdf/DRIC\\_DEIS\\_Written\\_Comments\\_by\\_Advocacy\\_Groups\\_Churches\\_&Non-Profit\\_Agencies.pdf](http://www.partnershipborderstudy.com/pdf/DRIC_DEIS_Written_Comments_by_Advocacy_Groups_Churches_&Non-Profit_Agencies.pdf) (pp 1-8)
- (6) Dietrich R. Bergmann comments submitted to MDOT on 29 April 2008  
[http://www.partnershipborderstudy.com/pdf/DRIC\\_DEIS\\_Written\\_Comments\\_by\\_Individuals.pdf](http://www.partnershipborderstudy.com/pdf/DRIC_DEIS_Written_Comments_by_Individuals.pdf) (pp 40-54)
- (7) Dietrich R. Bergmann comments submitted to MDOT on 29 May 2008  
[http://www.partnershipborderstudy.com/pdf/DRIC\\_DEIS\\_Written\\_Comments\\_by\\_Individuals.pdf](http://www.partnershipborderstudy.com/pdf/DRIC_DEIS_Written_Comments_by_Individuals.pdf) (pp 2-6)
- (8) Dietrich R. Bergmann comments submitted to OMOT on 12 Dec 2008  
[http://www.partnershipborderstudy.com/pdf/EA-Report/EA\\_AppendixD.pdf](http://www.partnershipborderstudy.com/pdf/EA-Report/EA_AppendixD.pdf) . (pp 91-102)
- (9) Dietrich R. Bergmann comments submitted to MDOT on 05 Jan 2009.0528  
[attached to reference (10)]
- (10) Dietrich R. Bergmann comments submitted to Ontario MOE on 27 Feb 2009  
[not shown on DRIC website, but included in Ontario MOE record for DRIC EA]

# DRIC Environmental Assessment

1 message

Janet May <janet@smartgrowth.on.ca>

Mon, Jun 1, 2009 at 10:52 AM

Reply-To: janet@smartgrowth.on.ca

Dear Ms. McLennon:

The Ontario Smart Growth Network, a network consisting of 64 member organizations, joins OSGN member Transport 2000 (Ontario) and five other organizations in the comments dated May 29, 2009 on the DRIC Environmental Assessment. I have attached a copy of those comments.

Yours sincerely,

Janet May  
Executive Director  
Ontario Smart Growth Network  
215 Spadina Avenue, Suite 132  
Toronto, Ontario  
M5T 2C7  
416 533-1635 ext 3

[www.smartgrowth.on.ca](http://www.smartgrowth.on.ca)

 **2009 0529OntarioMOE Gerretsen.pdf**  
35K



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## MICHIGAN CHAPTER

June 29, 2009

Catherine McLennon, Special Projects Officer  
Environmental Assessment and Approvals Branch  
Ontario Ministry of the Environment (MOE)  
VIA Fax: 416-314-8452

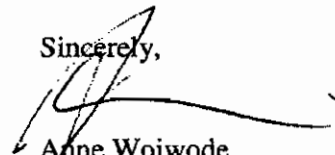
RE: Detroit River International Crossing (DRIC) Project Environmental Assessment

Dear Ms McLennon:

The Sierra Club Michigan Chapter and Southeast Michigan Group, on behalf of the Sierra Club (US), join with the Michigan Environmental Council and several other organizations in submitting the attached comments regarding Detroit River International Crossing (DRIC) Project Environmental Assessment. The comments were originally submitted by our colleagues on May 29<sup>th</sup>, and we join them in their comments.

Please let me know if there are any questions about our submission. Thank you.

Sincerely,



Anne Woiwode  
State Director



# SIERRA CLUB ONTARIO

July 1, 2009

**To: Honorable Ontario Minister of the Environment, John Gerretsen**  
via Catherine McLennon, Special Project Officer, EA Project Coordination Section  
Environmental Assessment and Approvals Branch  
Ministry of the Environment  
2 St. Clair Avenue West, Floor 12A, Toronto ON M4V 1L5  
Tel: 416-314-7222 800-461-6290  
Fax: 416-314-8452  
Email: [catherine.mclennon@ontario.ca](mailto:catherine.mclennon@ontario.ca)

**Re: Detroit River International Crossing (DRIC) Environmental Assessment (EA) prepared by the Ontario Ministry of Transportation (OMOT)**

Ontario MOE File #: 05087

[http://www.ene.gov.on.ca/en/eaab/projects/detroit\\_river.htm#](http://www.ene.gov.on.ca/en/eaab/projects/detroit_river.htm#)

*Dear Minister Gerretsen:*

On May 29, 2009 six non-governmental organizations submitted to you a joint statement requesting that you not approve the DRIC highway undertaking proposed in the EA identified above. The six organizations who issued the statement are as follows:

- Transport 2000 (Ontario)
- Transport 2000 (Canada)
- Citizens Environment Alliance (Windsor, ON)
- Michigan Environmental Council
- Transportation Riders United (Detroit, MI), and
- Michigan Association of Railroad Passengers, Inc.

We understand that on Monday, June 1, 2009 the following organization endorsed the joint statement:

- Ontario Smart Growth Network (OSGN)

We also understand that on Monday, June 29, 2009 our sister organization in Michigan endorsed the joint statement...

- Sierra Club Michigan Chapter

This is to advise you that the Sierra Club Ontario also endorses the May 29, 2009 statement.

Respectfully,

Dan McDermott, Director  
Sierra Club Ontario

24 Mercer Street, Toronto, ON M5V 1H3

Ph: 416-960-9606 Fax: 416-960-0020

[ontariochapter@sierraclub.ca](mailto:ontariochapter@sierraclub.ca)

<http://ontario.sierraclub.ca>



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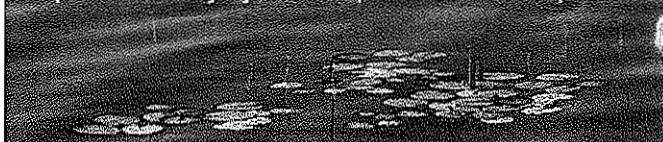


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# WINDSOR BRIDGE TRUMPS TORONTO TRANSIT

Press Release  
For Immediate Release  
April 12, 2010

## WINDSOR BRIDGE TRUMPS TORONTO TRANSIT

TORONTO - The McGuinty Government announced on Friday April 9th that "improving the flow of traffic at the Windsor border is the number one economic infrastructure priority for the Government of Ontario."

Premier McGuinty made this statement in "Ontario Announces Improvements To Windsor-Essex Gateway," part of the Ontario Government's \$1.6 billion commitment to the controversial Detroit River International Crossing (DRIC) project that seeks to create a new taxpayer supported Windsor-Detroit border crossing. DRIC continues to advance despite the steady and persistent decline in cross-border traffic in the Windsor-Detroit corridor dating back to 1999.

Sierra Club opposes the DRIC project because it is unnecessary and environmentally destructive. On the Canadian side, access to the proposed new bridge would damage the environmentally sensitive Ojibway Prairie Complex of parks and preserves, harming at least 10 species at risk. The April 9 announcement also comes in the wake of an Ontario budget that strips \$4 billion in funding from Toronto transit projects despite evidence that Toronto traffic congestion ranks among the world's worst.

"The McGuinty Government has taken desperately needed funding away from Toronto transit to support the construction of an unneeded bridge to service declining cross-border traffic," said Dan McDermott, Sierra Club Ontario chapter director. "Toronto residents need new transit options, but these are being sacrificed for a decreasing number of people driving to Detroit."

The environmentally destructive and manifestly unneeded DRIC project should be abandoned for these reasons. McDermott added

### Get Involved

Did you once dream of making our world a better place? This is the place to start dreaming again. What you do here will make a difference. Absolutely. Unconditionally.

You **will** make a difference.

The Sierra Club of Canada is a grassroots volunteer-driven organization. Our most important work is accomplished by member-volunteers. We provide a framework within which you, as a member, get to decide for yourself what campaigns you'd like to pursue and how you'd like to contribute. You get to do what interests you the most, and there's lots



today "Premier McGuinty's support of DRIC and failure to support GTA transit sends a message to Torontonians that they are second class citizens of Ontario."

-30-

Contact:  
 Dan McDermott  
 Sierra Club Ontario Chapter Director  
 416-960-6075  
 416-873-3852 (cell)

Posted by Emma Cane on 04/12

## DRIC: Road-Based Infrastructure in the Era of Climate Change

Please join Sierra Club Ontario at Transport Action Ontario's Annual Meeting and afternoon program:

**Saturday 27 March 2010**

**Metro Hall, 55 John St., Room 302, Toronto**

South-east corner of King and John (two blocks east of Spadina)  
 Via TTC: take subway to St. Andrew, then walk through "PATH" to Metro Hall or walk above ground 2 blocks west. A map is available [here](#).

The AGM will be from 10 am - 12pm and will feature reports by President and Treasurer, Election of executive and directors. A complementary lunch is provided to members of Transport Action Ontario and guests who attend the morning annual meeting. Reservations are recommended: please contact Dan Hammond at: 1-888-410-4779; danielshammond(at)gmail.com or Tony Turrittin; 416-653-0607; turitti(at)yorku.ca by March 20, 2010.

The afternoon event will take place from 1:30pm- 4:00pm and will feature a discussion on the Detroit River International Crossing (DRIC): Road-Based Infrastructure in the Era of Climate Change. This panel discussion focuses on the important but underreported issue of the DRIC project. A panel of speakers from Michigan and Ontario will uncover the weaknesses behind this expensive, unsustainable and outdated infrastructure plan.

Speakers:

- \* Dr. Dietrich Bergmann, Ann Arbor, Michigan
- \* Albert Koehl, [Ecojustice](#), Toronto Office
- \* Paula Lombardi, [Ambassador Bridge Company](#), Warren, Michigan
- \* Emma Cane, Sierra Club Ontario
- \* Dan Hammond and Natalie Litwin, [Transport Action Ontario](#)

Posted by Emma Cane on 03/18

## Sierra Club Ontario sponsors Markham Foodbelt poll

The Markham Foodbelt has evolved from just being an idea: it is a commitment that is well overdue. The Foodbelt is a long-awaited solution to the need for protecting our dwindling agricultural land base, meeting the rapidly expanding demand for locally produced food, addressing the challenge of climate change and saying no to more sprawl development.

to choose from.

This isn't empty consumer sloganism. We're not saying you'll get healthy by buying our running shoes or that you'll find community by drinking our coffee or that you'll get sexy by wearing our underwear (although with us you've probably got a better chance with some of those things than with the corporateers).

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## Baird Donates \$550 million of Canadian Taxpayers' Money to Michigan

OTTAWA--Today the Federal Minister of Transportation, John Baird, confirmed the federal government intends to bailout the Detroit River International Crossing by offering to contribute an additional US\$550 million to the State of Michigan. The planned Windsor-Detroit bridge will be built through part of last remaining natural Prairie Ecosystems in Canada.

Sierra Club Ontario has filed for Judicial Review of the federal Environmental Assessment of the DRIC Project.

"Minister Baird is ignoring the need for a proper environmental assessment of this project," said John Bennett, Executive Director, Sierra Club Canada. "This project is now before the courts. It is inappropriate for the minister to be making announcements before the court rules," said Mr. Bennett.

Minister Baird wrote to Michigan Governor Jennifer Granholm saying "Canada would be prepared to offer to increase its financial participation for project components in Michigan that would not be funded by the public-private partnership or the United States Government". These proposed funds are in addition to the \$1.6 billion that the Ontario government committed to DRIC earlier this month on April 9th.

The proposed US\$550 million incentive from the Federal Government to the State of Michigan is completely unconscionable considering the risks posed to the environment and the public outcry surrounding the demise of Transit City in Toronto.

"If this is a test of whether or not the Endangered Species Act is not worth the paper it is written on, we just failed," said Emma Cane, Biologist and Sierra Club Ontario Forests and Wildlife Campaigner. "As a Canadian, I am outraged that our government is committing our tax dollars to the construction of infrastructure in Michigan. As a biologist, I am outraged that the DRIC is now allowed to demolish one of the last remaining natural Prairie Ecosystems in Canada."

On February 9th, 2010 the Ontario MNR issued a permit allowing the DRIC Project to circumvent the environmental protection offered by the Endangered Species Act. Sierra Club Ontario believes that invoking this clause in the Act violated the very principles of conservation that the Act was legislated to uphold.

-30-

Note: Letter from Minister Baird to Michigan Governor, Jennifer Granholm, is attached below.

Contact:

Sierra Club Canada: Michael Bernard 613-241-4611 x230  
Sierra Club Ontario: Emma Cane 416-960-9606

Attachment	Size
canda_letter_drlic.pdf	73.12 KB

Tags: National Ontario Chapter Wilderness and Species Conservation Protecting Biodiversity

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### Related Posts

#### Get BearSmart – Check out this Video on Proper use of Bear Spray

Carl Morrison 2010-01-22 16:39 Prairie Chapter

Humans account for over 90% of known grizzly bear mortality in Alberta. Although this is a discouraging figure, it speaks volumes of our direct ability and responsibility to reduce our impact on bears. Action Grizzly Bear continues to advocate for increased...

Tags: National, Prairie Chapter, Wilderness and Species Conservation, Protecting Biodiversity

#### Sierra Club Canada Statement on Imperial Oil and the Mackenzie Valley Pipeline Review

Michael Bernard 2010-01-29 18:00 Sierra Club Canada

"The joint review panel's recommendations were written to prevent another environmental disaster in Canada. If Imperial Oil is unable to abide by those recommendations then perhaps the pipeline should not be built," said Lindsay Telfer, Director of the Sierra...

Tags: Atmosphere & Energy, Mackenzie Valley Pipeline and Alberta Tar Sands National Prairie Chapter, Energy Onslaught

#### Action Grizzly Bear Appears in Front of Legislative Committee

Carl Morrison 2010-01-22 15:05 Sierra Club Canada

On Monday, Nov 2nd Action Grizzly Bear appeared before the Standing Committee on Resources and Environment. This government committee is composed of Members of the Legislative Assembly (MLA) from all parties and is tasked with hearing from the public on...

Tags: National, Prairie Chapter, Wilderness and Species Conservation, Protecting Biodiversity

More >>

Sierra Club Atlantic Chapter 412-1 Nicholes Street, Ottawa, Ontario, K1N 7B7 1-888-810-4204 info@sierraclub.ca

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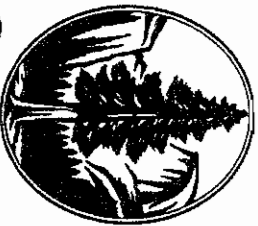
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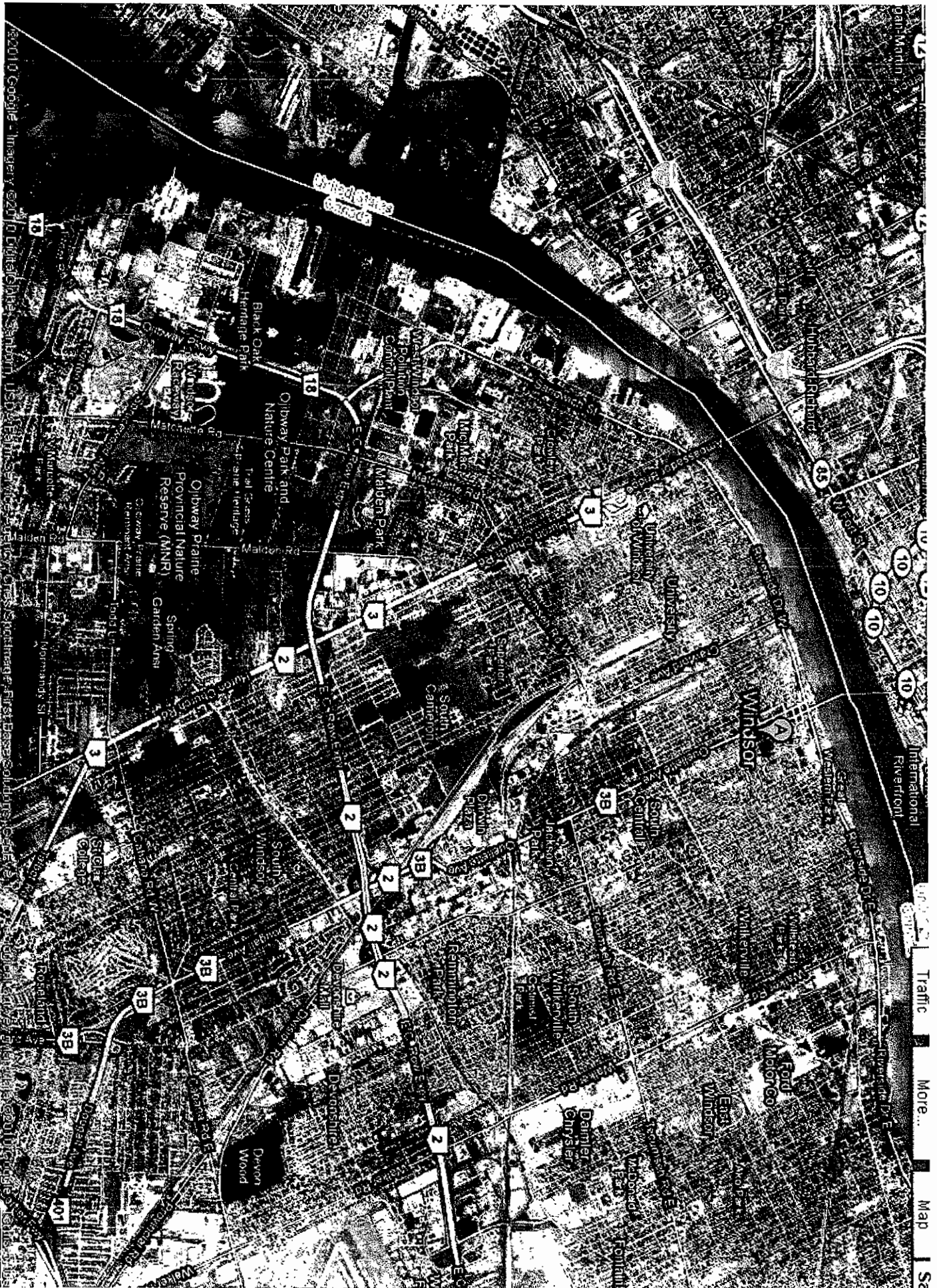
# DRIC Species at Risk Ojibway or the highway?



SIERRA  
CLUB  
ONTARIO

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Presentation by Emma Cane



## Background

- December 1, 2009: Transport Canada, Fisheries and Oceans Canada and the Windsor Port Authority approved DRIC Federal CEAA Screening Report.

*“The authorities may exercise any power or perform any duty or function with respect to the project because... the authorities are of the opinion that the project is not likely to cause significant adverse environmental effects.”*

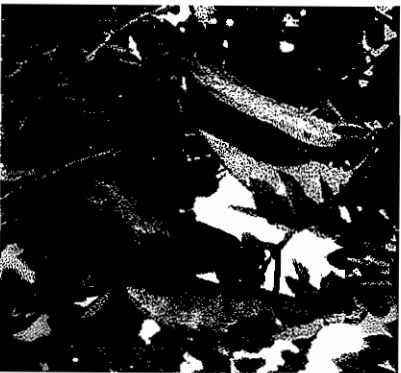
## Background

- *Environmental effects* are defined as:
  - “Any change that a project may cause in the environment including any change it may cause to a listed wildlife species, its critical habitat or the residences of individuals of that species, as those are defined in section 2(1) of the Species at Risk Act,”

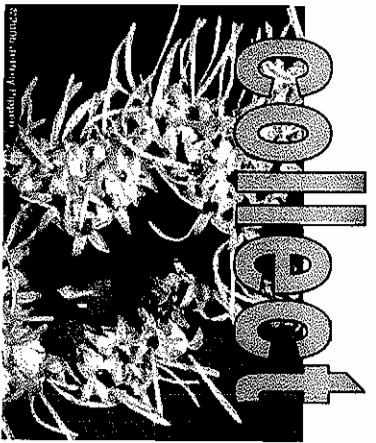
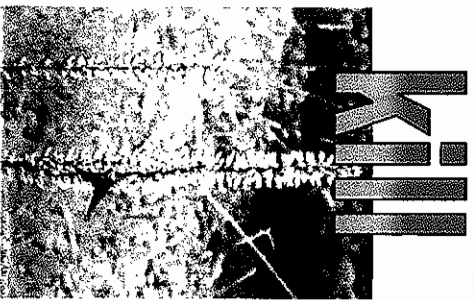
## Legal Requirements

- Major test under CEAA: federal authorities must conclude that the DRIC “is not likely to cause significant adverse environmental effects”
- Cumulative environmental effects, and their significance,
- Technically and economically feasible mitigation measures, need for the project and alternatives,
- Must apply the “precautionary principle”.

# Essential habitat for Threatened and Endangered Species



MTO's permit under clause 17(2)(d) of the  
Endangered Species Act, 2007 (ESA 2007)





## Review of Expert Reports

- Proposed mitigation fails to achieve the MINR's legislated goal of causing no harm to the Species At Risk: Objectives of the ESA are incompatible.
- Voiding of responsibility: omissions, faulty data, cautions willfully ignored.
- No Ecosystem-Based Approach: management plans, development of Windsor region.
- Refusal to provide full documentation.
- Trans-border traffic growth as anticipated by the DRIC project team in 2005 has failed to materialize.

## Sierra Club's Application for Judicial Review

- Under the federal *Species at Risk Act*, recovery strategies are required: federal and provincial lands.
- Do not invoke the Precautionary Approach as required by the ESA.
- *Endangered Species Act*. Recovery strategies are required for endangered or threatened species: behind schedule and not in place.
- Failure to take into account the precautionary principle?
- Some species known to the area were not identified, considered, or simply ignored.

# Species at Risk found in Ojibway

- Monarch (SPECIAL CONCERN)  
Giant Spreading Dragonfly (only location for Canada)  
Cuerna fenestella (only location in Ontario)  
Scarlet Ammannia (ENDANGERED: SARO)  
American Chestnut (THREATENED)  
Purple Twayblade Orchid (ENDANGERED)  
Red Mulberry rare: LaSalle Woods (ENDANGERED)  
E. Prairie White-fringed Orchid rare: wet prairies (ENDANGERED)  
Pink Milkwort (ENDANGERED)  
Milksnake (SPECIAL CONCERN)  
Eastern Massasauga Rattlesnake (THREATENED)  
Five-lined Skink (SPECIAL CONCERN extirpated – Carolinian population is ENDANGERED under ESA)
- Blanding's Turtle (THREATENED)  
Northern Map Turtle (SPECIAL CONCERN)  
Common Musk Turtle (THREATENED)  
Spiny Softshell Turtle (THREATENED)  
Bald Eagle (ENDANGERED-ON)  
Northern Bobwhite extirpated (ENDANGERED)  
Greater Prairie-Chicken extirpated (EXTIRPATED)  
Red-headed Woodpecker (SPECIAL CONCERN)  
Acadian Flycatcher (ENDANGERED)  
Tufted Titmouse (S2S3)  
White-eyed Vireo (S2B, S2N)  
Hooded Warbler (THREATENED)  
Yellow-breasted Chat (SPECIAL CONCERN)  
Grey Fox (THREATENED)

# Colicroot

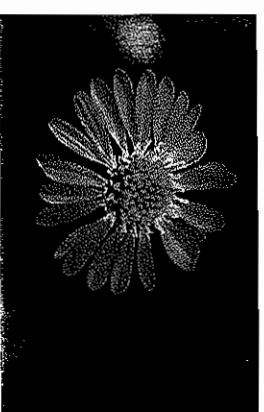
(Threatened since 1988)

- 38% of the Canadian population is within the WEP, 26% is next to the WEP. 88% of habitat on the WEP is planned to be destroyed: expert recommended <50%
- Tonic: indigestion, rheumatism (rhizome)
- Requires open sites: burning, disturbance.
- Recovery strategy was due June 5, 2007 for a 60-day public comment period (SARA s.42 & 43).
- Demonstration of successful procedures with a minimum of 1 year survival prior to destruction of existing habitat



# Willowleaf Aster

(Threatened since 2003)



- “the WEP is unlikely to jeopardize the survival of Willowleaf Aster... but only if the proposed mitigation measures are followed **rigorously.**”
- May 2003: Met criteria for Endangered but designated Threatened due to protection within several Windsor Ojibway Prairie Complex sites.
- Proposed recovery strategy for the Willowleaf Aster was due for posting on the Public Registry by January 12, 2009 for a 60-day public comment period (SARA s.42 & 43). ”

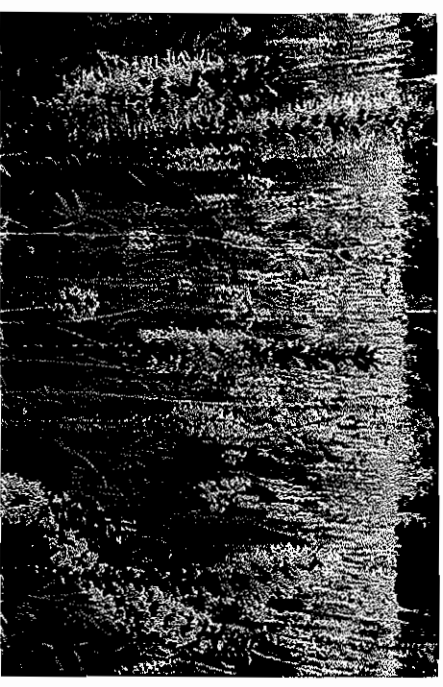
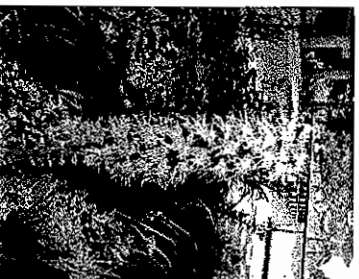
# Kentucky Coffee-tree, Common Hop-tree and Dwarf Hackberry



- <10 of each species in the WEP footprint
- “not worth expending the resources to preserve these individuals”

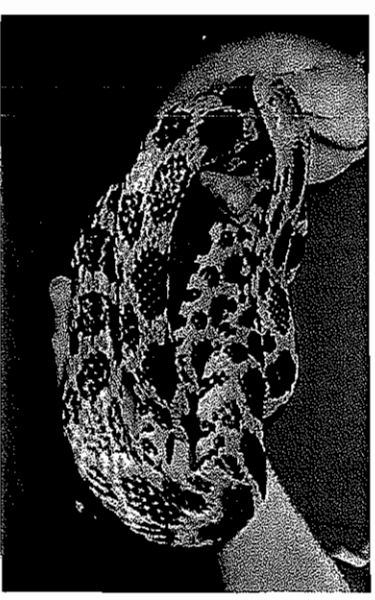
## Dense Blazing Star

- Lack of data: cannot assess full impact of the WEP
- “For ..17(2)(d) permits it is recommended that proponents conduct inventory work if it is unavailable, as otherwise there is insufficient information to make an informed decision about the potential impact of a development.”
- COSEWIC status  
pending 2010



## Eastern Foxsnake

- “Viability... cannot be ensured



- under proposed mitigation measures... a lofty goal without precedent” But OK, based on assumption that the WEP will less destructive than other development scenarios.
- Assumption that mitigation will be partially successful: habitat creation and enhancement areas were stated to be complete and demonstrated to be functional before current habitat is destroyed.
- This has not been done yet.



## Butler's Gartersnake

- Lack of sufficient data to determine whether the mitigation will succeed.
- Only 15-23 breeding females: stressed, population ↓20% in last 10 years.
- No one has ever successfully translocated: no restoration strategies either
- No factual foundation in many assertions of the report: crayfish burrows, Sarnia population.



## Why is this important?

- Test for the ESA
- Prairie remnant
- Climate change
- Local ecological heritage
- Biodiversity

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