APPENDIX D

Comments Received During Pre-Submission Review

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SISKINDS | THE LAW FIRM

EMAIL paula.lombardi@siskinds.com

FILE NO. 810750/PL/pl

DELIVERED BY EMAIL AND FACSIMILE (1-519-973-7367)

November 17, 2008

Mr. Roger Ward
Senior Project Manager
Ministry of Transportation
Windsor Border Initiatives Implementation Group
949 McDougall Avenue, Suite 200
Windsor ON N9A 1L9

Dear Mr. Ward:

Re: Detroit River International Crossing Study ("DRIC")
Draft Environmental Assessment Report - Public Comment Period

We have been retained to act on behalf of The Canadian Transit Company and have been following the preparation of the environmental assessment as it relates to the Detroit River International Crossing Study ("DRIC"). The advertisement in the Windsor Star on November 10, 2008 requests that comments on the Draft Environmental Assessment Report be submitted no later than December 12, 2008.

Please confirm that the last date to submit comments on the Draft Environmental assessment is **December 12, 2008** as indicated in the Windsor Star advertisement. Taking into account the length of the comment period, approximately four (4) weeks, we are assuming that this does not represent the initial comment period statutorily required under section 6.4 of the Ontario *Environmental Assessment Act* ("OEAA").

The prescribed deadline for the initial comment period is set out in the OEAA, specifically Ontario Regulation 616/98 which provides for a seven (7) week public comment period. Provided all public comments are received within the statutorily required seven (7) week period, the Ministry of the Environment is required to consider all comments received during its review of the environmental assessment. In the event you are treating this advertisement as the initial comment period then the appropriate statutory deadline for comments would be **December 29, 2008**.

We would ask that you clarify this matter as soon as possible and advise us of the deadline for comments. Further, if this is not considered the initial comment period on the environmental assessment we would ask that you advise as to when you anticipate giving public notice of the seven week comment period.

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At this time we also request notification of any and all comment periods, meetings, open houses as they relate to the DRIC environmental assessment process.

Yours very truly,

Siskinds LLP

Per: Paula Lombardi
Paula Lombardi

c: Mr. Murray Thompson, (via facsimile 519-969-5012)

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EMAIL paula.lombardi@siskinds.com

FILE NO. 810750/PL/pl

DELIVERED BY EMAIL AND FACSIMILE (1-519-973-7367)

December 12, 2008

Mr. Roger Ward
Senior Project Manager
Ministry of Transportation
Windsor Border Initiatives Implementation Group
949 McDougall Avenue, Suite 200
Windsor ON N9A 1L9

Dear Mr. Ward:

Re: Detroit River International Crossing Study ("DRIC")
Draft Environmental Assessment Report - Public Comment Period

As you are aware, we have been retained to act on behalf of The Canadian Transit Company and have been following the Detroit River International Crossing Study ("DRIC") and the preparation of the environmental assessment. The advertisement in the Windsor Star on November 10, 2008 requests that comments on the Draft Environmental Assessment Report W.O. 04-33-002 dated November 2008 ("Draft EA") be submitted no later than December 12, 2008.

Due to the deficiencies in the Draft EA, the release of new reports[1] dated December 2008 and the failure to provide a copy of the federal screening report for review, The Canadian Transit Company is reserving its right to provide more detailed comments once it has had the opportunity to review all of the documents.

FEDERAL SCREENING REPORT

The DRIC project represents a complex undertaking that requires both federal and provincial approval and involves a myriad of complex technical and legal issues. The Draft EA refers to a separate federal screening report that has been prepared pursuant to the *Canada-Ontario Agreement on Environmental Assessment Cooperation*.

1 Air Quality Impact Assessment (December 2008) - Technically and Environmentally Preferred Alternative (updated Preface Dec. 8/08), Human Health Risk Assessment (December 2008) - Technically and Environmentally Preferred Alternative, Built Heritage Impact Assessment (December 2008)- Technically and Environmentally Preferred Alternative.

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The Draft EA at page 2-2 indicates that a separate federal screening report was prepared to support federal decision-making. As of December 10, 2008 the Canadian Environmental Assessment Registry[2] has neither posted nor requested public comments on the screening report. There appears to be a disconnect between the federal and provincial environmental assessment processes. The Draft EA indicates a federal screening report was prepared, however, this report is not yet posted for comment on the public registry. It appears that the federal environmental assessment process is lagging behind the provincial process for some unexplained reason.

We fail to understand how the federal and provincial government can expect fulsome and comprehensive comments on the proposed DRIC project when all of the information legislatively required has not been provided for review and comment at the same time. We further note that cumulative effects are not taken into account in the provincial Draft EA as this is a federal requirement as indicated by the Draft EA Guidelines, issued under the *Canadian Environmental Assessment Act* dated November 2006. The disconnect between the two processes has put our client at a considerable disadvantage by forcing a review and comment on these documents one at a time.

ADDITIONAL REPORTS DECEMBER 2008

In addition, the technically and environmentally preferred alternative reports relating to air quality, human health risk assessment and built heritage were released in December 2008, approximately two weeks after the open houses held to review the Draft EA and two weeks prior to comments being due on the reports. Two weeks hardly provides enough time to review these reports and provide comprehensive comments.

As indicated above, The Canadian Transit Company is reserving its right to provide comprehensive comments once all of the documents, including the federal screening report, are available for review and comment.

AMBASSADOR BRIDGE

The Draft EA recognizes the importance of the Windsor-Detroit border crossing as an important trade corridor between the United States and Canada.[3] The Ambassador Bridge began operation on November 11, 1929, was built with private sector funds and functions as one of the busiest international crossings.

The Canadian Transit Company, on December 4, 2007 submitted a Screening-Level Environmental Assessment for the construction and operation of a new international bridge across the Detroit River parallel to the existing Ambassador Bridge that connects into the

2 See www.ceaa.gc.ca, CEAR Reference Number 08-01-18170.
3 Draft Environmental Assessment Report – W.O. 04-33-002, November 2008, p. 1-2.

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existing plazas and infrastructure in both Canada and the United States. The proposed new span is referred to as the Ambassador Bridge Enhancement Project or the Ambassador Bridge Replacement Span ("Replacement Span"), and uses existing infrastructure to provide additional crossing capacity.

The six-lane, cable-stayed design of the proposed Replacement Span will allow for the efficient and smooth flow of vehicles across the Ambassador Bridge corridor. What the Draft EA ignores throughout the document and fails to take into account is that traffic levels at the Ambassador Bridge crossing are lower today by 24.6% than traffic levels in 1999. This means that the crossing capacity available at the Ambassador Bridge corridor to accommodate future growth is greater than what is stated in the Draft EA. In addition, the proposed Replacement Span increases future crossing capacity at the Ambassador Bridge corridor. The implementation of the proposed FAST/NEXUS lanes along with freer flow of traffic offered by the proposed Replacement Span will reduce travel time significantly at the Ambassador Bridge corridor.

THE ENVIRONMENTAL ASSESSMENT TERMS OF REFERENCE

The Draft EA has neglected to follow the Environmental Assessment Terms of Reference dated May 2004 ("terms of reference"). The approved terms of reference established the framework for the preparation and review of the environmental assessment. The Draft EA must be prepared in accordance with the approved terms of reference. We note that the terms of reference indicate that the Detroit River International Crossing Project ("DRIC") *"is being undertaken to address the long-term needs of the border transportation network."*[4]

The Ontario *Environmental Assessment Act* ("OEAA") does not specify what is to be included in the terms of reference. The terms of reference must meet the requirements of section 6 of the OEAA and should include the following elements, among others: description of the existing environment and flexibility to accommodate new circumstances. We are surprised that the Draft EA has relied on outdated traffic projections that are unrealistic and overly inflate current traffic levels. The Draft EA has failed to accommodate revised traffic projects to develop more realistic options that would meet the long-term needs of the Windsor-Detroit border transportation network.

Section 2 of the terms of reference deals with the purpose of the undertaking and specifically subsection 2.1.3.(a) Existing-Windsor Detroit Border Crossings relies on the outdated traffic information to justify its statement that the Ambassador Bridge will reach available capacity within five years. In addition, several statements in the Draft EA incorrectly suggest that there are problems associated with the Ambassador Bridge corridor and neglect to rely on accurate and current data to support such a bald statement. The terms of reference should have been

4 Detroit River International Crossing, Environmental Assessment Terms of Reference, p. 2

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drafted in such a manner as to be flexible in dealing with traffic projections and the impact of such projections on existing border crossing capacity.

We also note that the terms of reference in section 2.3 Transportation Opportunities indicates that optimization of existing infrastructure will be considered as an opportunity to enhance benefits to the existing border region.[5] The use of the existing infrastructure of the United States and Canada plazas to accommodate an improved crossing with the construction of the Replacement Span has not been appropriately considered. Instead, the Draft EA relies on a "cookie cutter" approach for the land requirements for a new Point of Entry in Canada as a means of inappropriately eliminating the existing Ambassador Bridge crossing from the alternatives to be considered. Notwithstanding that, upon closer review and consideration, it is clear that The Canadian Transit Company well exceeds the requirement that approximately 80 to 100 acres (30 – 40 hectares) of land be dedicated to Canadian customs processing facilities for the Ambassador Bridge crossing. In addition, to promote the use of existing infrastructure it should be recognized that the Canadian Plaza currently serving the Ambassador Bridge is not a generic Point of Entry, it has been operational and modified over time as requested by Canada Border Services Agency for the last eighty (80) years.

TRAFFIC PROJECTIONS

The Draft EA neglects to revise the terms of reference to reflect the existing data to indicate a decrease in border crossing traffic the Ambassador Bridge corridor and the Windsor-Detroit Tunnel. The actual data indicates that traffic volumes to date are lower than their peak in 1999. The statistics outlined below clearly show, contrary to the statements in the Draft EA, the ongoing decline in the number of vehicles using the Ambassador Bridge to cross the Canada – United States border. The Draft EA has a responsibility and an obligation to present accurate information and should be required to rely on current statistics that show the continuing decline in cross-border traffic in the Windsor-Detroit corridor.

Year	Total Number of Vehicles	Percentage Change from 1999 Level
1999	12,436,066	4.17%
2000	12,301,001	- 2.14%
2001	11,131,751	- 10.53%
2002	10,454,922	- 9.76%
2003	9,464,086	- 12.94%

5 Detroit River International Crossing, Environmental Assessment Terms of Reference, p. 23

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2004	9,607,404	0.29%
2005	9,384,390	- 4.72%
2006	9,393,872	- 0.64%

Vehicles using the Windsor-Detroit tunnel crossing have declined 43.03% since 1999, while there has been a 24.46% decline in vehicles using the Ambassador Bridge. As indicated by the actual statistics, the Draft EA is based on numbers that are artificially inflated and incorrectly states higher volumes than what actually has been experienced. Notwithstanding that the actual statistics were readily available and the Draft EA could easily have been updated to reflect more realistic traffic patterns.

The ongoing decline in cross border traffic is not only being experienced in the Windsor-Detroit corridor, the Blue Water Bridge in Sarnia has also experienced a similar drop in traffic patterns. In 1997, the second span to the Blue Water Bridge opened, and the result has been that the projected traffic from 1991 through to 2031 grossly exceeds the actual traffic flow using the Blue Water Bridge. Projected traffic patterns must be based on the actual data that shows an ongoing and continued decline of vehicles using the Windsor-Detroit corridor.

The Draft EA also neglects to take into consideration that the Ambassador Bridge has, and continues to work jointly with the CBSA to reduce congestion, increase safety and facilitate processing of all vehicles in an efficient manner.

ALTERNATIVES ANALYSIS

The Ambassador Bridge Replacement Span was identified as one of the top overall performers on the United States side in terms of effectiveness and cost-effectiveness. More importantly, the Replacement Span was considered the top performer on the United States side in terms of community/neighbourhood impacts, consistency with local planning and protecting natural features including a top performer in terms of constructability. The Replacement Span also had better performance in terms of improvement to regional mobility.[6]

The United States team recommended that the Ambassador Bridge crossing and the proposed Replacement Span be carried forward for consideration on the short list of practical alternatives. However, without any consideration for the existing facilities and use of existing infrastructure, the Draft EA applied a generic point of entry criteria to the existing Ambassador

6 Draft Environmental Assessment Report – W.O. 04-33-002, November 2008, p. 5-43.

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Bridge plaza as a means of removing the Ambassador Bridge corridor from the alternatives assessment. There is no rationale whatsoever to require generic point of entry facilities at an existing crossing. The Draft EA completely misrepresents the requirements of the Canada Border Services Agency for the Ambassador Bridge crossing, identified as crossing X12 and Plaza CT1. The Draft EA alleges the disruption of 3,490 household and 25 or more businesses. This is a complete misrepresentation of what is required to operate the Windsor Plaza to accommodate the existing Ambassador Bridge and/or the Replacement Span.

The Ambassador Bridge Replacement Span uses existing infrastructure and has been inappropriately and without any rationale excluded from the alternatives analysis without further consideration. The Draft EA fails to acknowledge the use of existing infrastructure as a means of decreasing the environmental impacts associated with the construction of a new crossing and plaza.

The Draft EA projects that the proposed new crossing will divert traffic away from the Ambassador Bridge, Windsor-Detroit Tunnel and Blue Water Bridge. The proposed new crossing appears to be nothing more than the federal and provincial governments' desire to compete with the existing crossings. Unfortunately, such competitiveness diminishes the environmental considerations and analysis in the Draft EA.

OEAA AND CEAA

The Draft EA fails to take into consideration and reflect the purpose of the OEAA and the *Canadian Environmental Assessment Act* ("CEAA").

The purpose of the OEAA is set out in section 2 and states:

> The purpose of this Act is the betterment of the people of the whole or any part of Ontario by providing for the protection, conservation and wise management in Ontario of the environment. R.S.O. 1990, c. E.18, s. 2.

The preamble of the CEAA reflects the federal government's intent to play a leadership role both domestically and internationally in environmental assessment and sustainable development. It also recognizes the importance that all Canadians place on environmental quality. CEAA commits the federal government to fostering economic development in a way that will not compromise environmental quality.

We encourage the DRIC team to reflect on the purpose and principles of CEAA and OEAA and address the inadequacies that are identified in the Draft EA.

CONCLUSION

Based on our preliminary assessment the Draft EA dated November 2008: fails to rely on accurate traffic projections for its Transportation Needs Assessment; misrepresents the

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impacts of the Ambassador Bridge Replacement Span; incorrectly states the impacts of the Ambassador Bridge plaza on the community and neighbourhood; inappropriately applies the criteria for a new generic Point of Entry to the existing Ambassador Bridge Point of Entry; misrepresents the impacts of the Ambassador Bridge Replacement Span and plaza on the cultural resources in the area; neglects to consider the cumulative impacts associated with the proposed DRIC crossing; fails to take into account the cross-border effects of the proposed DRIC project on the Windsor area; overlooks the impacts of the proposed DRIC project on existing archaeological and heritage resources; and, appears to have provided technical studies that are based on false or misleading assumptions.

At this time, The Canadian Transit Company is reserving its right to provide a comprehensive review of the DRIC proposal once all of the documents, including federal, provincial, and the associated technical studies, are available for review and comment.

We would ask that you notify us of any and all upcoming comment periods, meetings, open houses as they relate to the DRIC environmental assessment process, including notification of the submission of the Draft EA to the Ministry of the Environment for approval and submission of the screening report to the federal government.

Yours very truly,

Siskinds LLP

Per: Paula Lombardi
Paula Lombardi

c: Mr. Murray Thompson, (via facsimile 519-969-5012)

*Comments to CEAA

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DELIVERED BY EMAIL (CEAA.Ontario@ceaa-acee.gc.ca)
AND FACSIMILE (1-416-952-1573)

December 12, 2008

Canadian Environmental Assessment Agency
Toronto Office
55 St-Clair Avenue East
Room 907
Toronto ON M4T 1M2

Re: Detroit River International Crossing
CEAR reference number 06-01-18170

We have been retained to act on behalf of The Canadian Transit Company and have been following the preparation of the provincial and federal environmental assessment documents as they relate to the Detroit River International Crossing Study ("DRIC"). It is our understanding that the federal and provincial environmental assessment processes were coordinated pursuant to the *Canada-Ontario Agreement on Environmental Assessment Cooperation* ("the Agreement").

The Agreement 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.

The Draft Environmental Assessment Report, Individual Environmental Assessment W.O. 04-33-002 ("Draft EA") dated November 2008 at page 2-2 indicates that a separate federal screening report was prepared to support federal decision-making. However, it appears that the screening report referred to has not been subject to public comment. We note that as of December 10, 2008 the Canadian Environmental Assessment Registry has neither posted the screening report nor requested any public comment on the screening report.

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There appears to be a disconnect between the federal and provincial environmental assessment processes. The Draft EA indicates a federal screening report was prepared, however, this report is not yet posted for comment on the public registry. It appears that the federal environmental assessment process is lagging behind the provincial process.

We fail to understand how the federal and provincial government can expect fulsome and comprehensive comments on the proposed DRIC project when all of the information legislatively required has not been provided for review and comment at the same time. We further note that cumulative effects are not taken into account in the provincial Draft EA as this is a federal requirement as indicated by the Draft EA Guidelines, issued under the *Canadian Environmental Assessment Act* dated November 2006. The disconnect between the two processes has put our client at a considerable disadvantage by forcing us to review and comment on these documents one at a time.

At this time, we request copies of any and all documents submitted by the DRIC in support of the screening report, including any draft screening documents, work plans and federal agency comments associated with any documents. In addition we request notification of any and all comment periods relating to the federal screening report.

Should you have any questions, please do not hesitate to contact the undersigned.

Yours very truly,

Siskinds LLP

Per: Paula Lombardi
Paula Lombardi

c: Mr. Roger Ward, Senior Project Manager

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December 1, 2008

By e-mail

Mr. Dave Wake
Manager, Planning Office
Windsor Border Initiatives Implementation Group
Ministry of Transportation
659 Exeter Road
LONDON, Ontario
N6E 1L3

Dear Mr. Wake:

Re: Missing DRIC Reports – Windsor Essex Parkway

I am writing in response to your letter of December 1, 2008 responding to my e-mail of November 27th in which we, on behalf of the City of Windsor, requested specific information regarding the DRIC air quality investigations. A copy of that e-mail is attached as Appendix A to this letter.

As we advised you in that e-mail, the lack of any measured/modelled values in the DRIC air quality alternatives assessment reports that are available to the public presents a fundamental problem for the objective review of your decision-making process and gives rise to problems in terms of replicability and traceability.

Your response letter, indicating that this information would be available "in a few days" is prejudicial to the City's ability to fairly and meaningfully comment on this issue especially in light of your unilateral December 12 deadline.

This problem is exacerbated in respect of approximately 12 other studies which DRIC has omitted to publish which are also reference documents to the DRIC decision-making process results presented in the draft Environmental Assessment Report. The missing reports include such other critical ones as the following: Human Health Risk Assessment, Social Impact Assessment, Noise and Vibration Assessment and Draft Generation of Practical Access Road Alternatives Report.

Given that you state DRIC will be publishing air quality data in "a few days" I repeat my request to make it available to us immediately electronically or by courier. Obviously this data has existed for many months and is available to DRIC/SENES. To the extent that you do not wish to further prejudice the City of Windsor, we suggest it is in your interest to provide it to us immediately.

Finally, your response does not indicate that the report you will be publishing will provide all elements of the important information requested in my e-mail e.g. "the distance from the travelled portion of the Parkway to each receptor should be indicated". Please ensure that and other specific information requested in the e-mail is included in what I anticipate will be your immediate further response.

Yours sincerely,

GOWLING LAFLEUR HENDERSON LLP

David Estrin
Certified Environmental Law Specialist

DE:tp

cc: Mayor Eddie Frances

Appendix "A"
E-mail to Dave Wake from
David Estrin, Sent November 27, 2008, 3:12 p.m.

Dear Mr. Wake:

We are attempting to assist the City of Windsor in reviewing the draft EAR.

Unfortunately the air quality analysis DRIC chose to provide is almost entirely based on percentages; no measured and modelled output, in actual values, such as ug/m3 are provided. See for example Table 5.1 in the Practical Alternatives Evaluation Working paper, Air Quality Impact Assessment, May 2008 which provides no measured/modelled values for exceedances; and the draft EAR contains no further actual data.

This presents issues for objective review and also gives rise to problems in terms of replicability and traceability of your decision making process.

1) Please provide to me a disk or by other electronic means all air quality modelling results for Pm 2.5 (in ug/m3)
at least for the no build alternative, Alternative 3, Alternative 2B and the Parkway.

2) Please provide on aerial photos or on a map the exact location of all receptors used in the modelling for each of the above alternatives re PM 2.5 and the measured/modelled values at each of these receptors. The distance from the travelled portion of the Parkway to each receptor should be indicated.

3) Please provide Table 5.1 in the Practical Alternatives Evaluation Working paper, Air Quality Impact Assessment, May 2008 populated in ug/m3 rather than % for each of the alternatives.

Please acknowledge receipt of this request and advise when we can expect to receive this data. We would like to have what is available by Friday and the remainder by Monday. Obviously if there is a SENES unpublished report which has this and other air quality modelling results that would also be helpful . Please call if you have any questions.

David Estrin
Environmental Law Specialist
Gowling Lafleur Henderson LLP
Suite 1600, 1 First Canadian Place
100 King Street West
Toronto, Ontario M5X 1G5

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Fax: 416-863-3401
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"Wake, Dave (MTO)"
<Dave.Wake@ontario.ca>
06/12/2008 04:52 PM

To "Ward, Roger (MTO)" <Roger.A.Ward@ontario.ca>, "Foster, Joel (MTO)" <Joel.Foster@ontario.ca>
cc <Jacquie_Dalton@URSCorp.com>, <Holly_Wright@URSCorp.com>, "Sandy Willis - SENES Consultants Limited" <swillis@senes.ca>, "Murray Thompson (E-mail)" <murray_thompson@urscorp.com>
bcc
Subject FW: DRIC Air report and Requested information (email to D. Estrin)

fyi

From: Wake, Dave (MTO)
Sent: December 6, 2008 4:52 PM
To: 'Estrin, David'
Cc: Murray Thompson (E-mail)
Subject: RE: DRIC Air report and Requested information

Dear Mr. Estrin:

I am writing in response to your recent email messages, in which you requested specific information regarding the air quality investigations.

The *Air Quality Assessment Report-Technically and Environmentally Preferred Alternative was* posted to the website late Friday. This paper reports the modelling results in µg/m^3. Table 3.3 in this report specifies the distance from the roadway to the sensitive receptors.

In addition, we will send to your office, by courier, a CD containing three electronic files:

- The first file contains the receptor numbers, the UTM coordinates and descriptions of receptors if applicable.
- The second file contains $PM_{2.5}$ modeled results for No Build. All modelled results include a 90th percentile background as agreed to by various Canadian regulatory agencies in the original Air Quality Work Plan. Results include the maximum, annual average, and varying percentiles for modeled results.
- The third file contains $PM_{2.5}$ modeled results for The Windsor-Essex Parkway. This has the same file format as for the No Build Files. Receptors that were located within the Right of Way limits and on service roads have been removed from this file.

If you have further questions after reviewing this report, please let me know.

Yours truly,

Dave Wake
Manager, Planning Office
Windsor Border Initiatives Implementation Group
Ministry of Transportation
659 Exeter Road
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Tel: 519-873-4559

Fax: 519-873-4789
Email: dave.wake@ontario.ca

From: Estrin, David [mailto:David.Estrin@gowlings.com]
Sent: December 3, 2008 3:23 PM
To: Wake, Dave (MTO)
Cc: Murray Thompson (E-mail)
Subject: DRIC Air report and Requested information

Dear Mr. Wake, you have not acknowledged receipt of my emailed letter of Dec. 1 to you responding to your letter of that date, not has DRIC provided any of the information requested on air issues requested in my email of November 27.

Your December 1 letter indciated that the new Air report would be available "in a few days". While we still request that it be made available to us immediately, I would also like to understand how long we are required to wait under your definition of a "few days" - when will it be posted? It has been almost one week since we made our request.

Further, you will appreciate that as that missing report "Technically and Environmentally Preferred Alternative - Air Quality Impact Assessment Report" is by its title apparently limited to the Parkway as DRIC's preferred alterternative, even when that report is made available it will most likely NOT contain any of the information requested in my November 27 email on this topic for other alternative access route options.

DRIC's refual to provide or even commit to the provision of the requested information in my email of November 27 as well as the fact DRIC has chosen to not publish other critical data by which the alternative access routes can be meaningfully compared, such as exactly where the variously changed rights of way limits are and were measured from in evaluating impacts in the evaluation of each of alternative access routes, as well as DRIC's continuing failure to publish a number of key critical reports vital to your EAR is creating further prejudice to the EA process and to key stakeholders such as Windsor.

We again invite you to provide the requested information immediately and to call me if you have any questions.

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December 8, 2008

By e-mail

Mr. Dave Wake
Manager, Planning Office
Windsor Border Initiatives Implementation Group
Ministry of Transportation
659 Exeter Road
LONDON, Ontario
N6E 1L3

Dear Mr. Wake:

Re: DRIC Air Contaminant Assessment Data and Reports – Windsor Essex Parkway – Further Major Issues

Dear Mr. Wake:

I hope DRIC will consider and act immediately on this letter sent in response to your email of Saturday in which you indicate DRIC just posted its Air Analysis of the Parkway late Friday, December 5th and in which you also indicate DRIC will finally send some of the air data not included in that report which we requested on behalf of the City of Windsor on November 27th.

1) Concern that significant air impact data for the Parkway greenspace is being kept secret

While we understand from your email that we will receive a disk with some of the specific air analysis data we requested, we are very concerned with the following statement as to what DRIC has chosen to delete from one of the files:

"Receptors that were located within the Right of Way limits and on service roads have been removed from this file."

Unlike other DRIC access road alternatives, the Parkway has a very wide ROW in which DRIC proposes to provide greenspace, much of which will be accessible to the public. We expected and require with the disk air impact analysis for the Parkway greenspace. DRIC is promoting its Parkway choice very substantially based on the

greenspace it states will be created and its value as healthy recreational areas and linkages.

Provision of this data is essential. DRIC has not publicly published data on the high levels of harmful air contaminants that will be present in accessible areas of the Parkway greenspace, despite the statement in DRIC's latest report that "Potential air quality effects from the roadway decrease with increasing distance from the roadway. Therefore, the greatest effects will occur adjacent to the roadway."

The fact that DRIC has chosen to keep that data secret is consistent with our concern that the DRIC air contaminant analysis supporting selection of the Parkway has left out important data, and that DRIC's EA conclusions about the Parkway's benefits are misleading and not supported by the data that you have had for many months, but continue to hide from the public.

I presume your apparent rationale for proposing to delete data which your model does produce on receptors close to the road is premised on the statements made in the DRIC Air Quality reports that "the models do not accurately predict air pollutant concentrations at locations on a source (i.e., on the roadway)."

That may indeed be a limitation of the model DRIC has used, but it does not excuse DRIC not assessing and evaluating by other means the extent of the harmful air contaminant levels that members of the public will be exposed to directly above the Parkway, specifically while they are on the short Parkway overpasses/land-bridges.

And while the model may have limitations "at locations on a source (i.e. on the roadway)", greenspace situated beyond the edge of the roadway is not "on a source" and is not "on the roadway"; and the models therefore do predict concentrations on such greenspace.

As the modelling DRIC has carried out does predict air impacts beyond the travelled portion of the roadway, i.e., on the Parkway jogging and walking trails that will be near to the roadways and other areas of accessible Parkway greenspace in the ROW, there is no rational excuse not to provide it.

In short, that the model may not be accurate for the roadway itself cannot be used as a valid rationale to avoid providing modelling results for the air contaminant levels that will occur on the vast areas of the Parkway greenspace that lie beyond the travelled portion of the roadway. The DRIC air model can be used (and no doubt has been used) to obtain results for these areas, and we request it be provided, particularly as DRIC has claimed its new Parkway "greenspace" is a major rationale for selecting the Parkway. Your own reports indicate and indeed show receptor grid locations for air modelling results that are as close as 50 metres from the current and proposed roadways. Further, it is clear that modelling results DRIC obtained for Alternatives other than the Parkway, all of which had significantly narrower ROW width than the Parkway ROW, would include air contaminant concentrations that would occur within the Parkway ROW. See for example the statement at pg. 39 of DRIC's most recent Air report which states "...the edges of the proposed right-of-way (ROW) limits differ for many of the access road alternatives...a receptor that was located within 50 m from the ROW for one Alternative could have been within the ROW for another Alternative." All of this

confirms DRIC has the data which predicts the levels of contaminant impacts to which users of the Parkway greenspace will be subjected.

It is incumbent on DRIC to provide an analysis demonstrating that the one hour and 24 hour average concentrations of contaminants, particularly the very health impactive contaminant PM 2.5, will not be exceeded by people trying to use the Parkway land bridge greenspace as well as Parkway trails and other Parkway lands DRIC is promoting at Parkway attributes.

DRIC's failure to provide that data is a fundamental impact assessment failure which appears intended to hide the significant public health impacts that will be associated with the Parkway designed greenspace.

DRIC's failure to provide that data also prevents the public and the Ministry of Environment understanding how longer tunnelled sections, such as those proposed by GreenLink, would prevent the public being exposed to harmful air contaminants as they use greenspace above and around the GreenLink longer tunnels.

Your email refers to the recently released December 5, 2008 DRIC Air Quality report and states that "Table 3.3 specifies the distance from the roadway to the sensitive receptors", with the inference the public and Windsor should take some comfort from the fact that DRIC's choice of "sensitive receptors" has been modelled.

However, these modelling results provide no comfort whatsoever to members of the public who would expect to be able to safely use the DRIC Parkway greenspace.

There are 64 DRIC "sensitive receptors" in that Table. However, as can be seen from a summary of that table which we prepared from your report and data:

- none of the "sensitive receptors" appear to be within the DRIC ROW, in which the Parkway greenspace is located;[1]
- indeed, 50% of these "sensitive receptors" are at least 300 metres or more distant from the new 401 roadway; 15 are 500 m or more distant, and at least five are more than 1 kilometre from the new 401;
- the average distance between the new 401 and your "sensitive receptors" is over 400 metres;
- the average distance between the closest service road and "sensitive receptors" is over 300 metres.

Summary of DRIC Table 3.3 – Sensitive Receptors

Total No. of Receptors	**64**
Receptors within 0-99m of 401	5
Receptors within 100-199m of 401	11
Receptors within 200-299m of 401	16
Receptors 300m or more from 401	32

[1] DRIC Figure 3.3. "Sensitive Receptor Locations" as provided on the DRIC web site does not provide a clear image as to exactly where these locations are. Locating the "sensitive receptors" from Table 3.3. as carefully as is possible given the limitation of the Figure, none appear to be within the DRIC ROW.

Receptors within 0-99m of Road	10
Receptors within 100-199m of Road	10
Receptors within 200-299m of Road	20
Receptors 300m or more from Road	24
Avg distance to 401 (m)	418.5
Avg distance to Road (m)	304.1

As you say in the lastest DRIC Air Quality report, "Potential air quality effects from the roadway decrease with increasing distance from the roadway. Therefore, the greatest effects will occur adjacent to the roadway."

2) We are at a loss to understand the following fundamental issues which arise from the preceding matters:

a) how, on the one hand, DRIC can claim the Parkway is preferred because it is creating useable, healthy greenspace within the Parkway ROW, and on the other hand DRIC can avoid considering Parkway greenspace users as "sensitive receptors" and thereby avoid providing any analysis, let along any facts, regarding the unhealthy air impacts such users will encounter?;

(b) how can DRIC be acting in the public interest and be fair in its process when it has selected the Parkway as its preferred alternative access route based on the benefits of the greenspace while avoiding assessing and evaluating the higher and unhealthy levels of air impacts that will occur in the Parkway greenspace -- particularly in light of DRIC's own knowledge and admission that "the greatest effects will occur adjacent to the roadway"?

c) how can DRIC have acted fairly in preferring the Parkway over GreenLink when DRIC failed to assess GreenLink using the EA criteria and Terms of Reference -- yet had that been done the analysis would clearly show GreenLink's longer tunnels will protect the public using GreenLink parkland from unhealthy traffic contaminants while the Parkway will cause users of Parkway greenspace to suffer unhealthy levels of air contaminants?

3) DRIC's delivery of some, but not all required air quality data, days before the DRIC self-created December 12 comment deadline, creates further fundamental prejudice to the DRIC EA process and to the City of Windsor

Our email request for DRIC air quality data included the following very specific request: "all air quality modelling results for PM 2.5 (in ug/m3) at least for the no build alternative, Alternative 3 (tunnel), Alternative 2B and the Parkway." Although your email of December 6 commits to send PM 2.5 data for the no build and the Parkway, it omits to

commit to provide similar data for Alternative 3 and Alternative 2B. We require that data and again repeat our request to have it sent immediately.

DRIC's strategic decision to delay making critical air quality data available until barely one week before your self-imposed Dec 12 deadline for stakeholder comments (the report posted on your web site late in the day on Friday Dec 5), and DRIC's further decision to delay delivery by almost two weeks of some other air impact data requested by the City of Windsor on November 27, together with the omission to commit to provide all of the data requested by the City together with DRIC's decision to keep secret other critical aspects of that information, are unfortunate examples of the disregard, and indeed what appears to be the contempt, DRIC has for its legal obligations under the EA Act.

DRIC was required to publish all such information in a timely way (when it was produced and not many months later), allow a reasonable time for its analysis by experts retained by concerned stakeholders and also allow time for the provision of a response to DRIC based on that expert advice.

By holding back much of this vital information until the last minute (we refer again to your self-selected December 12 comment deadline) and refusing to provide other components, DRIC has chosen to act in a manner that prejudices the public interest, the City of Windsor and the EA process.

Given the Premier's statements last Friday in Windsor that the Parkway is a done deal -- he endorsed the Parkway plan and is eager to see it move ahead – "we make a call and we stand by that and we will be judged by that", DRIC's attitude regarding air impact analysis is perhaps not unsurprising. However, that does not mean DRIC's conduct, or the Premier's endorsement, makes DRIC's process legally compliant with its EA responsibilities.

May we again suggest DRIC consider its options for attempting to obviate the fundamental prejudice DRIC has chosen to create for its own process.

Yours sincerely,

GOWLING LAFLEUR HENDERSON LLP

David Estrin
Certified Environmental Law Specialist

DE:tp

cc: Mayor Eddie Francis

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GOWLINGS

Submission on Behalf of the City of Windsor

Comments on the Access Road Undertaking

Detroit River International Crossing Study and Ontario Ministry of Transportation

Draft Environmental Assessment Report, November 2008

December 12, 2008

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Submission on Behalf of the City of Windsor

Comments on the Access Road Undertaking

Detroit River International Crossing Study and Ontario Ministry of Transportation

Draft Environmental Assessment Report, November 2008

EXECUTIVE SUMMARY

This submission on behalf of the City of Windsor to DRIC focuses solely on that part of DRIC's evironmental assessment (EA) process in which DRIC decided that the Windsor-Essex Parkway (the Parkway) was the environmentally preferred alternative for the design of the access road component of the DRIC study. The access road would extend Highway 401 from its current termination point to a new border crossing in Windsor also being proposed by DRIC.[1]

Windsor has, since the commencement of the DRIC environmental assessment (EA) in 2004, attempted to meaningfully participate in that process. Windsor's participation included carrying out peer reviews with the assistance of highly experienced consultants as well as seeking to make positive suggestions to DRIC as to alternative ways of carrying out this undertaking, most especially in respect of the best way of extending Highway 401 to the proposed new DRIC bridge (access road). A major part of Windsor's contribution was the development by Windsor staff and expert consultants of a green corridor concept, which Windsor first advanced to DRIC in June 2007, and which was further detailed and publicly presented in October 2007 as GreenLink Windsor.

[1] Legally, the Ontario Ministry of Transportation (DRIC) is the proponent of the DRIC access road undertaking. Before having legal authority to proceed with the access road component DRIC must, pursuant to the Ontario *Environmental Assessment Act*, (OEAA) obtain approval of its environmental assessment (which DRIC/DRIC call an Environmental Assessment Report (EAR)) from the Minister of Environment or, if the matter is referred by the Environment Minister to the Environmental Review Tribunal, from the ERT. In that DRIC is the proponent of the access road undertaking, reference to DRIC in this submission should be understood to be interchangeable with DRIC.

Windsor does not dispute the need for a new border crossing, customs plaza or access road, or the location of any of these project elements. Windsor's objective, throughout the environmental assessment process, has been to ensure that the access road that is built will indeed be the "technically and environmentally preferred alternative." Unfortunately, as elaborated in this submission, the DRIC Parkway clearly cannot be considered, let alone be objectively judged, as achieving that objective. On the contrary, DRIC's own air quality data shows that the Parkway fails to protect human health and the environment; the Parkway will result in the unacceptable exposure of Windsor and LaSalle residents living, working or going to school near the Parkway, as well as those who would use the Parkway "greenspace", to hazardous levels of air contaminants.

Windsor's residents will live with the access road for decades to come. The design of the access road is critical, as it has the potential to either divide or unite communities, improve or worsen air quality, help or hinder the quality of life in Windsor's communities.

Windsor and DRIC agree that the access road that is selected should be the one that does best job of easing traffic congestion, while at the same time protecting people, neighbourhoods and air quality. Windsor fully supports the evaluation factors and criteria that DRIC selected to evaluate the access road, as approved by the Minister of the Environment in the Terms of Reference (TOR).

Windsor's basic complaints in relation to the DRIC access road EA process are clearly stated:

- DRIC failed to fairly apply <u>its own criteria</u> to the evaluation of access road alternatives;
- DRIC refused to evaluate GreenLink as an access road alternative; and
- DRIC improperly decided that the Parkway is the preferred access road alternative without prior publication of an evaluation demonstrating that is a reasonable conclusion and without providing for public comments on the validity of that evaluation before the decision was made.

Instead, DRIC announced its Parkway decision on May 1, 2008 and has been defending it ever since. In these actions DRIC has fundamentally failed to comply with its legal obligations under the Ontario *Environmental Assessment Act* (OEAA) and the EA TOR with respect to the access road undertaking.

Not only does good decision making require fair and even-handed evaluation of alternatives, this type of evaluation is mandated by statute, the OEAA. Consequently, Windsor expected a fair evaluation of all reasonable access road alternatives, as required by the OEEA Act and the TOR.

Windsor expected that DRIC would apply consistent criteria to each alternative. Windsor expected that DRIC would fairly present the analysis of impacts, costs and benefits of each alternative to stakeholders, <u>before</u> DRIC made a decision. Windsor expected DRIC to keep its promises regarding consultation and participation. DRIC failed on every count.

DRIC's failure to meet Windsor's expectations is not simply an indication of poor planning or consultation practices, it is also a matter of law. Each point of friction between DRIC and

frustrated stakeholders has its roots in a statutory violation, in a failure by DRIC to abide by the terms of the TOR and the OEAA.

GreenLink Windsor has unique and multiple positive attributes and it was overwhelmingly endorsed by Windsor residents in open houses and polling as vastly preferred to the DRIC Parkway. A fair and objective assessment of GreenLink by DRIC would have identified these positive attributes and led to GreenLink being identified as the environmentally preferred access road alternartive.

Unfortunately DRIC dismissed GreenLink from consideration without any fair and objective evaluation of it, despite legal requirement on DRIC to do so pursuant to the OEAA.

Of equal if not greater concern is that an objective analysis of the DRIC Parkway, using DRIC's own data, shows that the Parkway clearly cannot be considered the "environmentally preferred alternative" that DRIC claims. Rather, the Parkway will fail to protect human health and the environment. These implications of the Parkway have never been revealed by DRIC.

In contrast, DRIC's own data clearly shows that an access road with tunnelled sections as proposed by GreenLink (but not the Parkway "tunnels" which are actually short overpasses/land bridges), would be protective of health and the environment, in addition to better connecting neighbourhoods and providing healthy green space.

Windsor's findings and comments with respect to DRIC's decision that the Parkway is the environmentally preferred access road alternative are summarized in items A – C in this executive summary, and are elaborated in the remainder of this submission.

A. DRIC's draft EAR is fundamentally erroneous in concluding that the Windsor-Essex Parkway is the "environmentally preferred alternative" for the proposed access road. On the contrary, DRIC's own air quality data shows that the Parkway fails to protect human health and the environment; the Parkway will result in the unacceptable exposure of Windsor and LaSalle residents living, working or going to school near the Parkway, as well as those who would use the Parkway "greenspace", to hazardous levels of air contaminants.

DRIC has hidden these results from the public and neglected to describe and evaluate these significantly negative human health impacts.

Had DRIC's air impact data been appropriately analyzed and fairly presented, it would show that the only means of protecting the health of Windsor residents near the access road and users of access road greenspace from hazardous road emissions is by tunnelling those parts of the access road in proximity to residential neighbourhoods. DRIC's air modelling clearly shows that tunnelling segments of the access road achieves this protection. The Parkway overpasses cannot prevent such health impacts.

B. GreenLink Windsor clearly qualifies as the environmentally preferred access road alternative using DRIC's EA evaluation criteria; the Parkway does not. A fair and objective analysis using DRIC's own data and modelling of segments of the DRIC Alternative 3 (Tunnel) demonstrates that the tunnelled sections of the access road, as proposed by GreenLink, (but not the short overpass/land-bridges in the Parkway) would provide significant protection of human health and the environment and result in GreenLink being identified as the "environmentally preferred alternative".

GreenLink would also more clearly achieve other important DRIC EA criteria better than the Parkway, such as connecting communities and community features on either side of the right-of-way (ROW) through healthy greenspace. GreenLink Windsor will provide healthy greenspace and connections of communities on either side of the ROW, in contrast to the contaminant laden and noisy land bridges and other alleged "green" areas in DRIC's Parkway, without the cost of a full tunnel.

C. Unfortunately, and contrary to the OEAA, DRIC failed to carry out the required EA evaluation of GreenLink. Further, in arriving at its decision to select the Parkway as its preferred access road alternative, DRIC failed to observe legally binding environmental assessment process requirements imposed both by the OEAA and the Terms of Reference for the DRIC EA. DRIC's actions in respect of the Parkway choice were also unfair to the City of Windsor.

Unless DRIC agrees to carry out an appropriate, objective analysis regarding the impacts and benefits of access road alternatives in accordance with required statutory procedure and with fairness towards stakeholders such as Windsor, the DRIC's decision that the Parkway is the "environmentally preferred access road" alternative is subject to being declared a legal nullity.

DETAILED SUMISSIONS

A. DRIC's draft EAR is fundamentally erroneous in concluding the Windsor-Essex Parkway is the "environmentally preferred alternative" for the proposed access road.

On the contrary, DRIC's own air quality data shows that the Parkway fails to protect human health and the environment; the Parkway will result in the unacceptable exposure of Windsor and LaSalle residents living, working or going to school near the Parkway, as well as those who would use the Parkway "greenspace", to hazardous levels of air contaminants.

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Had DRIC's air impact data been appropriately analyzed and fairly presented, it would show that the only means of protecting the health of Windsor residents near the access road and users of access road greenspace from hazardous road emissions is by tunnelling those parts of the access road in proximity to residential neighbourhoods. DRIC's air modelling clearly shows that tunnelling segments of the access road achieves this protection. The Parkway overpasses cannot prevent such health impacts.

1. DRIC's air modelling data shows that traffic emissions from the Parkway will be hazardous to human health for a wide swath of Windsor throughout a large part of each year on both side of the Parkway right of way (ROW) and that users of the Parkway's "greenspace" will be exposed to even higher concentrations of these contaminants.

2. On the other hand, DRIC's own data also shows that emission from an access road ROW which has significant tunnelled sections – e.g. an access road with one kilometre long tunnels, as modelled by DRIC for the Tunnel (Alternative 3) and proposed by the City's GreenLink -- will prevent exposure of adjoining neighbourhoods to these dangerous pollutants. However, the short (maximum 240 metre) overpass/land-bridges DRIC has chosen for the Parkway will not provide meaningful protection.

3. DRIC's EAR is deficient and unacceptable because, unless it is rewritten, it misleads the public and even could mislead government agencies, such as the Ministry of Environment, on this fundamental issue.

4. The text of DRIC's draft EAR as well as its air quality reports do not discuss and therefore do not reveal the significance of how the Parkway will in fact lead to negative and harmful air impacts; equally unacceptable is that the DRIC EAR does not reveal that another alternative form of access road, one with substantial tunnelled sections, will be protective of human health and meet Ontario air

standards for lands and people in the vicinity of the tunnels. These conclusions, which are not included in the DRIC draft EAR, were apparent from an independent expert analysis of DRIC air modelling data carried out on behalf of the City of Windsor by Dr. Tony van der Vooren, one of Ontario's most experienced air experts. The independent peer review commissioned by Windsor of the DRIC data shows that an access road with substantial tunnelled sections adjacent to residential neighbourhoods will prevent the human health impacts the Parkway will permit.

5. DRIC's draft EAR is fundamentally deficient for failing to acknowledge that its own contaminant modelling results shows that, rather than protecting human health and the environment, the Parkway will result in a wide swath of persons living in homes, studying in school and colleges, carrying out business or using parks in proximity to the 11 kilometre Parkway right-of-way (ROW) being subjected to concentrations of air particulates which DRIC's Human Health Risk Report accepts as sufficient to cause respiratory and cardiovascular disease, cancer and death.

6. DRIC's approach is contrary to the OEAA and to the public interest in failing to reveal that serious deficiency as well as not revealing that other alternatives it has studied will prevent these health impacts and therefore be environmentally preferred. DRIC has misled the public and failed to meet OEAA requirements in its draft EAR by comparing the air contaminant levels predicted to be associated with the Parkway with the no-build alternative and concluding that as DRIC air modelling results for the Parkway will be similar to those from the no-build scenario, the Parkway is acceptable.

7. Some of the highlights of that analysis, presented in more detail later in this submission, indicates that that within 50 metres of the DRIC Parkway right-of-way there are 230 homes that will be exposed to unacceptable levels of PM 2.5; that within 100 metres there are 585 homes that will similarly be impacted and that these impacts will occur despite the fact that the Parkway right-of-way would be substantially wider and displace twice as many residents than the right-of-way proposed for any other access road alternative.

8. The draft EAR is also misleading and erroneous when it concludes (page 3-21) "As the six kilometre tunnel alternative (DRIC access road Alternative 3) did not have substantial air quality benefits, neither would the shorter tunnels that were proposed in the GreenLink Windsor proposal." This conclusion is unsupportable based on DRIC and SENES (DRIC's air consultant) analysis which clearly shows that the tunnel was the only alternative <u>not</u> to cause air quality exceedances, while the Parkway failed to meet air quality standards by a wide margin.

9. DRIC has unreasonably ignored or discarded its own air report findings that only a tunnel would be protective of air quality criteria within 150 or more metres from the access road because DRIC made it clear it would not consider an end-to-end

tunnel. DRIC therefore ignored the results of its own air quality comparison in order to avoid having a tunnel appear to be environmentally preferred.

10. DRIC had, and continues to have, the responsibility to assess how access route alternatives, such as a tunnel, can indeed prevent exposure of residents to harmful levels of contaminants. For example, DRIC recognizes "there are three local air quality impacts to consider with the tunnels" such as those proposed by GreenLink:

- " the impact on the community adjacent to the tunnel
- the impact on receptors near the tunnel portals; and
- the impact on the air quality on the tunnel covered area (green space)." (pg 3-21)

11. However, DRIC failed to carry out that assessment using those three factors both with respect to GreenLink and also with respect to how substantial tunnelled sections, if incorporated into the Parkway, could provide local air quality benefits. This failure by DRIC is particularly unreasonable given that its own air quality modelling of the DRIC tunnel compared to other options showed that only the tunnel could protect local air quality and not lead to exceedances. It was also totally unreasonable because DRIC's air quality data shows that without tunnelling the Parkway will not provide the major benefit DRIC claims for the Parkway, healthy new greenspace; rather, without substantive tunnelled sections, the Parkway will only provide polluted and unhealthy greenspace.

<u>DRIC's Air Quality Impact Analysis is Flawed</u>

12. DRIC concluded in the EAR that all six access road alternatives were of equally "low impact" to air quality, and that there was "no clear preference" among them.[2] An analysis of DRIC's own data demonstrates that this conclusion is unsupportable.

13. Over the course of the next 20 years, only <u>one</u> of the six access road alternatives will produce air quality that meets Ontario and federal standards by 2035, and that alternative is the Tunnel. Every other alternative will fail to meet air quality standards by a significant margin – including DRIC's Preferred Alternative, the Parkway.

14. The Environmental Assessment Report ("EAR") does not come clean about the fact that the Parkway will fail to protect air quality – and as a result, the health of Windsor residents – when there is alternative available that will be fully protective of air quality.

[2] "The assessment found <u>essentially no difference</u> among the access road alternatives in terms of the improvements provided to local air quality compared to the no-build…", all alternatives were equally "low impact" (EAR, pg. 8-44).

15. This failure is particularly troubling in relation to the most vulnerable of Windsor's residents. Children, the elderly, and people with asthma and cardiopulmonary disease are most susceptible to, and suffer most from, poor air quality. (In addition, however, once Ontario's Air Quality Index rating reaches "poor" or "very poor", even healthy adults are put at risk.)

Air Quality in Windsor

16. DRIC has acknowledged that in Windsor already suffers from poor air quality and smog:

> "…existing air quality in the study area is…characterized by elevated pollutant concentrations in relation to rural areas, with periodic compromised air quality due to particulate based contaminants, which typically occur during smog events." (TEPA Air Quality Impact Assessment, pg. E-3).

17. Poor air quality is intimately linked to the particulate released by diesel-powered trucks, and to traffic in general crossing the border in Windsor:

> "Due to the proximity to the Canada-US border and the resulting high rate of traffic through the City of Windsor, vehicular emissions and their effect on air quality are of concern…The City of Windsor also has a high fraction of diesel powered transport trucks that are used to move goods into and out of Canada. Diesel exhaust is highly visible, and there is increasing evidence of health effects associated with it…" (TEPA Air Quality Impact Assessment, Dec. 2008, at pg. 1).

18. Windsor's air is also heavily impacted by transboundary pollution, as DRIC recognizes:

> "… eliminating all Ontario sources of emissions of PM2.5 and NO2 will have no impact on air quality during smog days due to the significant contribution from transboundary sources" (TEPA Air Quality Impact Assessment, Dec. 2008, at pg. 14).

19. Consequently, air quality was one of seven key evaluation factors for the access road.[3]

20. DRIC's stated goal in the air quality studies was not only to improve traffic flow, but also to improve air quality in comparison to existing conditions and in comparison to the No Build scenario. DRIC recognized that the preferred access road alternative should contribute as little additional particulate as possible to already poor background conditions, and if possible serve to improve air quality over existing conditions:

> "Thus, a primary objective of the Air Quality Assessment is to have a transportation solution that not only improves transportation…but also

[3] TEPA Air Quality Impact Assessment, Dec. 2008, at pg. 1.

> improves the overall air quality relative to existing conditions or "No Build"…" (TEPA Air Quality Impact Assessment, pg. 1)

21. DRIC's modelling has demonstrated that, with the No Build scenario, current levels of air pollution will only get worse. The story told in the EAR, and in the Air Quality Impact Assessment for the Technically and Environmentally Preferred Alternative (TEPA), is that the Parkway doesn't do much better than the No Build at improving air quality.

22. The story that DRIC fails to tell in the EAR is that the Parkway actually does much worse at protecting air quality than an access road with tunnelled segments.

23. In summary, DRIC's data demonstrated that there was an alternative capable of meeting the stated goal of providing significant improvements over current conditions and over the No Build scenario, while also improving traffic flow. **That alternative was Alternative 3, the end-to-end tunnel ("Tunnel"), which was modelled by DRIC in segments that look remarkably like the tunnels that Windsor is proposing in GreenLink.**

24. As set out in detail below, GreenLink offers the same potential as the Tunnel's segments to protect air quality in communities adjacent to the access road and within the greenspace created by GreenLink's tunnels.

25. The Parkway does not come close to the protection offered by GreenLink, or the Tunnel, because the Parkway does not actually propose to build tunnels. The Parkway proposes to build a series of landscaped overpasses, that DRIC has been calling "tunnels". However, these landscaped overpasses are not built like tunnels and – unlike real tunnels - they offer no meaningful protection of air quality.

26. Because DRIC has failed to fairly evaluate the Tunnel's segments, it has dismissed GreenLink without even carrying out an evaluation.

27. DRIC's rationale for refusing to evaluate GreenLink is as indefensible as its selection of the Parkway as the Preferred Alternative. Both decisions fly in the face of DRIC's own data, which demonstrates that only by tunnelling key segments of the access road will the air quality of Windsor's residents be protected.

Measuring Air Quality Impacts

28. DRIC selected fine particulate matter (PM2.5) as one of the key air pollutants to study, because it is the most critical air pollutant from a human health perspective. PM2.5 can be inhaled deep into the lungs, and cause serious health impacts, ranging from aggravated asthma and chronic bronchitis to premature death.[4] For

[4] Impacts listed by the World Health Organization (2004), as cited in DRIC Human Health Risk Assessment, Technically and Environmentally Preferred Alternative, December 2008 at pg. 28.

this reason, there is a federal standard of 30ug/m3 for PM2.5 that has been adopted by Ontario ("Standard").

29. It should be noted that DRIC's TEPA Human Health Impact Assessment acknowledges that heath impacts are likely occurring at existing rates of exposure to PM2.5 in Canada:

> "The World Health Organization Working Group stated that.... [adverse] health impacts also occur at particulate matter levels commonly observed in Canada..." (pg. 27)

30. DRIC also acknowledges that threshold of particulate exposure below which health impacts do not occur is not known with certainty, but that based on existing scientific studies, is expected to be lower than the existing Standard – around 7 ug/m3, as compared to a Standard of 30 ug/m3. In other words, the Standard is 23 ug/m3 higher than the lowest known effect level for particulate.

> "CARB (2008) indicated that 7 ug/m3 may serve as a possible threshold since this level was the lowest concentration observed in an American Cancer Society study carried out by Pope et al (2002). This large cohort study provided evidence that **exposures to PM2.5 as low as 7 ug/m3 can be associated with premature death**. This threshold was considered in this assessment as the health based limit." (pg. 28)

31. DRIC's Human Health Risk Assessment notes that mortality and disease impacts are measurable for fine particulate even on a very short term basis, as little as a single day smog event:

> "the National Mortality and Morbidity Air Pollution Study (NMMAPS) that has evaluated data from 90 large US cities (Dominici et al 2003).... has shown an increase in cardiopulmonary mortality. In the short term (within 1-2 days after air pollution exposure) the cardiopulmonary mortality increased by 0.21% **for each 10 ug/m3 increase in PM10**. The importance of this is that the particulate matter exposures that North Americans breathe on an almost daily basis have a measurable impact [sic] in our daily mortality total.
>
> Dominici et al (2006) re-examined the risks of cardiovascular and respiratory effects based upon hospital admissions associated with short term exposure ot PM2.5. The results of the study indicate a short-term increase in hospital admission rates associated with PM2.5 for all of the health outcomes (ie. cerebrovascular disease, peripheral vascular disease, ischemic heart disease, heart rhythm, heart failure, respiratory tract infection, and chronic obstructive pulmonary disease)... **The largest association was for heart failure, which had a 1.28% increase in risk per 10ug/m3 increase in same-day PM2.5 concentration."**

32. These implication of these findings is that it is absolutely critical that the alternative that is most protective of air quality be selected in relation to the air

quality evaluation factor. Not only should the Preferred Alternative be able to meet the Standard for PM2.5 (and other critical smog precursors), but also it should be the one that adds the least additional particulate to air quality that is already seriously degraded.

Air Quality In Communities Adjacent to the Parkway

33. DRIC's Draft Air Quality Impact Analysis does not show readers the real numbers, or actual pollution levels, that DRIC modelled for each of the six access road alternatives. Instead, DRIC provides results for each alternative as a percentage of the No Build modelling results. This masks the implications of the modelling, and allows DRIC to avoid showing the unreasonably high levels of pollution that the Parkway will generate.

34. When DRIC's percentages are replaced with actual numbers, it is clear that the Parkway fails to meet the Standard for PM2.5 by nearly 9 ug/m3, and is modelled to have as many as 23 days more exceedances than the Tunnel for specific sections of the access road.

35. It is also clear that the Tunnel is the only alternative of six able to meet the Standard and protect the air quality of Windsor residents even on the worst smog day in 2035. The Tunnel is predicted to have no exceedances of the CWS, while the No Build is modelled to have up to 74 days of exceedance for specific segments of the access road.

	Canada Wide Standard	**Tunnel**	**Parkway**	**Do Nothing**
DRIC's Comparison from May 2008 Report (Given in %)	N/A	66%	86%	100%
In Real Numbers: Maximum concentration PM2.5 in 2035 (ug/m3)	**30**	**29.7**		

[5] DRIC does not provide actual numbers for the No Build (ie does not tell the reader what 100% is equivalent to). However, DRIC's monitoring data from air quality stations beside the corridor from 2006 - 2007 provides us with the current worst-day maximum concentrations within the corridor (45 ug/m3 for the first quarter and 47 ug/m3 for the entire year of monitoring). The No Build scenario modelled by DRIC assumes that no improvements will be made to reduce congestion, but that traffic will grow and fuel standards will improve. To be conservative, we have used the current worst day maximum PM2.5 concentration, as measured by DRIC near the existing roadway, as the No Build maximum worst day PM 2.5 concentration in 2035: 45 ug/m3 (for the first quarter), which likely underestimates the worst-day pollution concentrations in 2035.

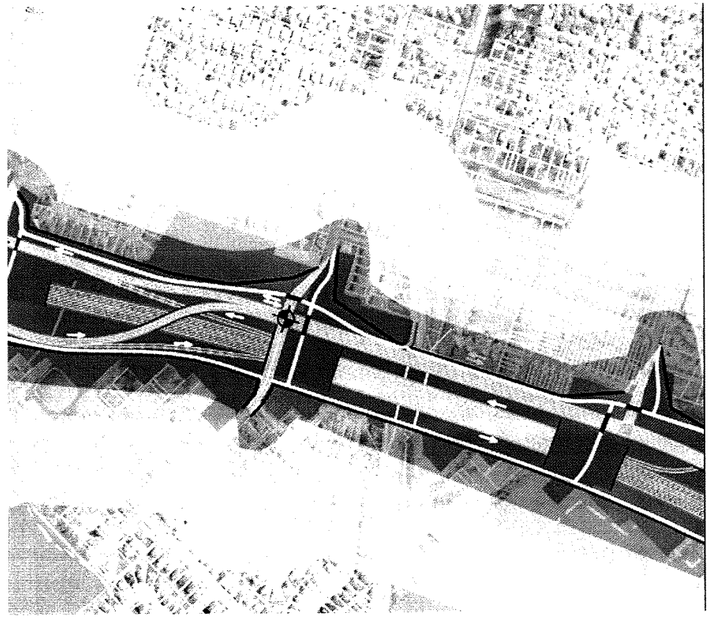
36. The Tunnel reduces total particulate matter on the worst smog day in 2035 by 15.3 ug/m3 compared to No Build, and shows no modelled exceedances of the Standard.

37. To put this improvement in air quality into context, by decreasing PM 2.5 by 15 ug/m3, the Tunnel's segments would result in a decrease of 6% for all causes of death, 9% decrease in cardiopulmonary mortality and 12% decrease in lung cancer based on the health impacts cited by DRIC per 10ug/m3 increment of PM 2.5.[6]

38. In contrast, the Parkway fails to even meet the CWS for PM 2.5. Yet DRIC has concluded that there is no difference between the alternatives, and that all are "equally protective" of air quality. The Parkway cannot be of "equally low impact" to the Tunnel, when it is almost 9 ug/m3 over the Standard.

39. Whatever DRIC concludes in the EAR, the families living in the estimated 230 homes within 50 m of the Parkway ROW, and 585 homes within 100 m of the Parkway ROW (and outside of the area proposed for purchase by DRIC), cannot be expected to consider the Parkway of equally "low impact" as a Tunnel that decreases death rates by up to 12% over the no-build.

[6] DRIC's Human Health Risk Assessment tells us that for every 10 ug/m3 increase in PM 2.5 there may be a corresponding **increase of 4% in all causes of death, 6% increase in cardiopulmonary mortality and 8% increase in lung cancer mortality** (pg. 31). In addition every additional 10 ug/m3 increase in PM2.5 may bring an additional 1.95% in pneumonia rates, 1.27% increase in cardiovascular disease, and 2.5% increase in COPD. DRIC Human Health Risk Assessment, Dec. 2008, at pg. 31-34.



40. This picture shows Parkway with **102 Houses within 100m** of the right of way (including St. Cecile Academy of Music and The Children's House Montessori School), of which 43 **Houses are within 50m** of the right of way (including St. Cecile Academy of Music)

41. DRIC's modelling also demonstrates that the Tunnel will improve air quality by two full categories on the Air Quality Index as compared to No Build. For example, if a smog day with the Do Nothing scenario caused air quality that was "very poor", the Tunnel would generate air quality that was "moderate".

42. The difference, in terms of health impacts, is remarkable. The Do Nothing Scenario would put people with respiratory disease, heart disease, children and the elderly at "high risk", and put even healthy adults at risk, while the Tunnel would protect these vulnerable populations and represent no risk at all to the general population.

43. The Ministry of the Environment's table, below, shows the "health effects of different AQI levels caused by fine particulate matter":

Health effects of different Air Quality Index (AQI) levels caused by fine particulate matter

Category	AQI	Fine Particulate Matter ($PM_{2.5}$)
Very Good	**0 - 15**	Sensitive populations may want to exercise caution.
Good	**16 - 31**	Sensitive populations may want to exercise caution.
Moderate	**32 - 49**	People with respiratory disease at some risk.
Poor	**50 - 99**	People with respiratory disease should limit prolonged exertion; general population at some risk.
Very Poor	**100 or over**	Serious respiratory effects even during light physical activity; people with heart disease, the elderly and children at high risk; increased risk for general population."

MOE, "Fine Particulate Matter", excerpted from MOE webpage on December 6, 2008 at www.airqualityontario.com/science/pollutants/particulates.cfm.

44. The Parkway is more than one full category worse than the Tunnel in terms of the Air Quality Index. Air quality that is "moderate" with the Tunnel would be "poor" with the Parkway, requiring vulnerable groups to stay indoors and limit physical activity, and creating air quality that puts even healthy adults at risk.

45. Once again, DRIC's EAR chooses to disregard these very real and very significant differences in air quality for Windsor, calling all alternatives equivalent and of equally "low impact". This is simply not true.

46. DRIC's data are as bad or worse. DRIC acknowledges in the December 2008 TEPA Air Quality Impact Assessment that the Parkway will generate air pollution concentrations as high as 114 ug/m3 for PM10, as compared to a standard of 50 ug/m3 for specific segments of the access road.

47. The PM10 maximum is fully 64 ug/m3 over the standard. DRIC's Human Health Impact Assessment advises that changes of as little as 10 ug/m3 of PM10 increases cardiopulmonary mortality by 0.21% in as little as 1-2 days of exposure (pg. 30), and an increase in 0.5% for all causes of death (pg. 32). Applying the increase to the whole 64 ug/m3 exceedance, without considering increases from current levels (which are not provided), the Parkway would increase the risk of cardiopulmonary mortality by 1.34% and for all causes of death by 3.2%.

48. The Tunnel, in contrast, prevents PM10 from escaping into residential communities, protecting residents who live adjacent to the tunnelled segments, along with users of the greenspace above the tunnel segments.

49. In comparative terms, five of the six alternatives that DRIC studied will make Windsor's air quality worse, than it is currently, particularly for those living adjacent to the new roadway, where impacts will be most keenly felt. Only one alternative will make it better.

50. DRIC disregards these findings completely in the EAR, and buries them in misleading text and tables in the Draft Air Quality Impact Analysis (May 2008).

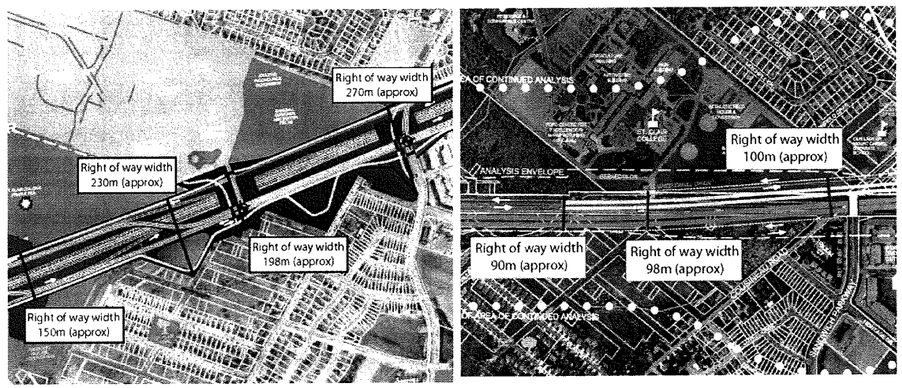
Air Quality Inside the Parkway ROW

51. Worse still is the air quality inside the Parkway ROW – precisely where the vast majority of DRIC's much-heralded greenspace will be located.

52. The Parkway places greenspace directly above the pollution source – i.e. on landscaped over passes – and directly adjacent to the pollution source, along the edge of the road and inside the Parkway's ROW.

53. As outlined above, air quality 50 m away from the Parkway ROW will fail to meet the CWS by a wide margin. The disparity widens even further, however, when one considers that those impacts were measured 40-200 m farther away from the Parkway than from the Tunnel, because the ROW for the Parkway was artificially widened.

54. The figure below illustrates the same section of the Parkway ROW and the Tunnel ROW showing the range in ROW widths for each (198 m – 270 m for the Parkway as compared to 90-100 m for the Tunnel). For this specific section, the Tunnel ROW averages ~96 m, while the Parkway is anywhere from or 54m to 174 m wider than the Tunnel.



55. The very limited improvement in air quality that DRIC predicts when comparing the Parkway to the No Build is due not to the impact of the overpass structures, but rather due to the fact that DRIC has widened the right-of-way ("ROW") for the Parkway, adding green buffers to this alternative before measuring impacts.

56. DRIC clearly acknowledged this mitigation of the Preferred Alternative in the TEPA Air Quality Impact Analysis released in December 2008.

"The Right of Way (ROW) is also expanded in sections with the Windsor-Essex Parkway to provide additional buffer" (pg. 2)

57. This green buffer was not integral to the design of the access road. Trails and greenspace could have been added alongside any of the other five Practical Alternatives with the same results in terms of air quality.

58. More important, the Parkway was the only alternative to be mitigated before the impacts of air pollution were measured. DRIC specifically refused to consider mitigation for any alternative other than from the Parkway.

"Mitigation options were not considered in this phase of the assessment". (Draft Air Quality Impact Assessment, May 2008, pg. 36)

59. As the impacts of any road are felt within the first 250 m, and DRIC measured air pollution 40-200 m further away from the source in relation to the Parkway than it did for any other alternative, DRIC unfairly stacked the deck in favour of the Parkway.

60. Air quality for people walking directly adjacent to the road, or on an overpass on top of the road, will be much, much worse than it is 100 m away from the road. DRIC provided data within the last week about air quality at the landscaped overpasses.[7]

61. What is clear from the December data is that PM 2.5 levels as high as 71 ug/m3 are modelled for the greenspace above the Bethlehem / Labelle Tunnel (South Portal) in 2035. The Standard for PM 2.5 is 30 ug/m3. DRIC also predicts that the CWS will be exceeded at this location for 74 days of the year.

62. In other words, air quality fully 41 ug/m3 above the Standard for PM2.5 has been predicted by DRIC for the greenspace on the landscaped overpasses.

63. DRIC describes this very greenspace as "new recreational space (parkland and trails)"[8], which constitute a "community benefit"[9] of the Parkway alternative, and a "corridor that better connects communities and natural features"[10]:

[7] It should be noted that DRIC's May 2008 data and its December 2008 data are irreconcilable. One must be incorrect. Setting aside the inconsistency for the purpose of providing comments, both reports show significant exceedances of air quality standards.
[8] Social Impact Assessment at pg. 127.

"The Windsor-Essex Parkway demonstrates a greater consistency with local municipal planning in terms of meeting objectives that improve the life of its residents…"[11]

64. Nowhere in DRIC's discussion of the benefit of the greenspace and green buffer included in the Parkway alternative does DRIC analyze the negative impacts of air quality within that greenspace that is 41 ug/m3 above the Standard for PM2.5. This is a notable absence particularly since vulnerable groups can be expected to use this greenspace – children and the elderly, for example, are precisely the sort of users that one might expect for recreational walking trails and parkspace.

65. Nor is PM 2.5 the only pollutant modelled to reach such staggering exceedances. On top of the same tunnel in 2035, PM10 is modelled to reach a maximum of 484 ug/m3, as compared to a standard of 50 ug/m3. **In other words, the Parkway produces air quality that fails the standard by 434 ug/m3 – or by 8.68 times**.

66. DRIC also predicts 182 days where the standard is exceeded – or fully half of the year.

67. DRIC does not tell stakeholders that the Tunnel – or the GreenLink tunnelled segments - would protect against all of these exceedances, because DRIC fails to present the results for the Tunnel or for GreenLink in the December TEPA Air Quality Impact Assessment or the Human Health Impact Assessment.

68. DRIC attempts to downplay the significance of these stunning exeedances by comparing the exposure of residents using the greenspace within the Parkway to the exposure of workers on a job site, and arguing that much higher limits should apply. However, DRIC acknowledges that short-term exposure criteria for healthy, adult workers have no bearing on health impacts within vulnerable groups, whether persons with asthma, cardiac conditions, the elderly, or young children. DRIC has simply failed to consider the health impacts of high pollutant levels on these groups.

69. The segments of the Tunnel evaluated by DRIC averaged 1.2 km in length, and generated air quality levels that met regulatory standards and provided a significant improvement over current conditions and the No Build scenario – meeting the very goal that DRIC stated in its TEPA Air Quality Impact Assessment.

70. GreenLink proposed 3 tunnelled segments of 1 – 1.2 km in length, located strategically so as to protect residential communities on either side of the Access road from air pollution.

71. GreenLink's long tunnels will protect air quality and prevent pollutants from reaching the greenspace above the tunnels and the backyards and adjacent homes,

[9] Ibid.
[10] EAR at pg. 8-46.
[11] Ibid.

just as the segments of the Tunnel were modelled to do. DRIC's own data demonstrates that only the segments of the access road that were tunnelled were able to meet the regulatory standard.

72. It must be reiterated that the only alternative that DRIC studied that included tunnelled segments was Alternative 3 (Tunnel). Although DRIC talks about "tunnels" when it describes the Parkway, what DRIC proposes are essentially landscaped highway overpasses, and not tunnels.

> "The tunnel structures are **typical of most overpass structures**...."
> (Draft Air Quality Impact Assessment, May 2008, at pg. 37)

73. As set out above, the Parkway's landscaped overpasses will clearly fail to protect air quality, while GreenLink's tunnels fully protect air quality – as the segments of the Tunnel did. As a result, the Parkway and GreenLink are fundamentally different from an air quality perspective – just as the Parkway and the Tunnel were fundamentally different.

74. GreenLink is the only alternative, apart from the Tunnel itself, that will create healthy greenspace with clean and breathable air, and to protect the communities adjacent to the Access road beside the tunnelled sections.

Noise Impacts Inside the Parkway ROW

75. DRIC also failed to consider the noise levels that users of the Parkway's greenspace would be subjected to.

76. The City of Windsor commissioned an independent Peer Review of noise levels that would be predicted to occur and impact users walking or playing on top of the Parkway landscaped overpasses (which vary in width between 120 to 240 m), as compared to the noise levels that would be experienced on GreenLink green space above its much longer (e.g. 1 km) tunnels.

77. The analysis carried by Valcoustics Canada Inc. (Dr. Al Lightstone, one of Canada's senior noise consultants) indicates that the noise levels on the DRIC overpasses would be significantly higher – by approximately 10 decibels, which is perceived by listeners as twice as noisy - as the noise level that would be experienced on green space above the segments of GreenLink's 1 km+ tunnels or the segments of the DRIC Tunnel, Alternative 3.

78. Noise levels on the DRIC landscaped overpasses (part of the DRIC "greenspace") would be twice as loud as the minimum noise level the Ministry of Environment recommends for recreational backyard purposes.

79. The acoustics analysis also found that within an area of about 67 metres on either side of the DRIC Highway 401 roadway, users of the Parkway "greenspace" will be exposed to noise levels of about 65 dBA, which again is 10 decibels more, or

twice as loud, as the noise level that the Ministry of Environment recommends for recreational backyard purposes.

80. Indeed, the noise level from the Parkway would only drop down to the minimum MOE recommended level for recreational areas at a distance of almost half a kilometre (450 metres) from the Parkway roadway. Even at a distance of about a 150 metres from the roadway, the predicted noise level is 60 dBA, which is "somewhat noisy" and not ideal for quiet contemplation.

81. DRIC's EAR is silent in relation to noise impacts to users of the Parkway's greenspace, and in relation to the comparative noise impacts of the Parkway and the Tunnel, or the Parkway and GreenLink.

Conclusion on Air Quality Impacts

82. Based on the foregoing review, three conclusions are inescapable.

83. First, the DRIC's own data does not support the conclusion that the Parkway is the environmentally preferred alternative.

84. Second, only GreenLink offers the benefits of the Tunnel's segments in terms of air and noise quality protection – the Parkway does not.

85. Third, only tunnelling key sections of the Access road will protect Windsor's air quality, and make the greenspace produced a comfortable and healthy place to relax and exercise for Windsor's residents and families.

86. The Parkway's greenspace will be polluted, noisy and unhealthy greenspace, which will fail to meet regulatory standards. In comparison, GreenLink's 340 acres of parkland can be expected to meet regulatory standards on the basis of the modelling for the Tunnel. GreenLink's parkland would be healthy, protective greenspace from an air quality and noise perspective.

87. The same is true of the air quality in the backyards of homes neighbouring the tunnelled segments of GreenLink – air quality would be protected, achieving regulatory standards.

88. GreenLink offers the potential to protect air quality in the same manner as the Tunnel segments, at considerably less cost. It offers significant and measurable benefits using the DRIC's own criteria, both for the users of 340 ha of parkland above GreenLink's tunnels, and for the homes and sensitive receptors that live adjacent to the proposed corridor, all of whom would see their air quality protected with GreenLink.

89. In an EA in which air quality is ranked as an important factor, the real impacts of the existing alternatives on air quality and health should have been fairly

evaluated and compared as between all reasonable alternatives. This was not done. DRIC's EAR therefore violates the Environmental Assessment Act, DRIC's own Terms of Reference ("TOR"), and the common law requirements of procedural fairness and fundamental justice.

90. GreenLink can avoid the negative air quality impacts that the Parkway will generate, at less than half the cost of the Tunnel. GreenLink merits a fair evaluation.

B. GREENLINK WINDSOR CLEARLY QUALIFIES AS THE ENVIRONMENTALLY PREFERRED ACCESS ROAD ALTERNATIVE IN ACHIEVING DRIC EA CRITERIA, WHEREAS THE PARKWAY DOES NOT.

A fair and objective analysis using DRIC's own data and modelling of segments of the DRIC Alternative 3 tunnel demonstrates that tunnelled sections for the access road, as proposed by GreenLink, (but not the short overpass/land-bridges in the Parkway) would provide significant protection of human health and the environment and result in GreenLink being identified as the "environmentally preferred alternative".

GreenLink would also more clearly achieve other important DRIC EA criteria better than the Parkway, such as connecting communities and community features on either side of the right-of-way (ROW) through healthy greenspace. GreenLink Windsor will provide healthy greenspace and connections of communities on either side of the ROW, in contrast to the contaminant laden and noisy land bridges and other alleged "green" areas in DRIC's Parkway, without the cost of a full tunnel.

91. The following slides are part of a power point presentation by the City given to DRIC on May 26, 2008 when DRIC finally attended a meeting with Windsor Council – almost one month after DRIC had announced it had decided the Parkway was its preferred access road alternative. In its draft EAR DRIC has continued to ignore its obligation to carry out the required GreenLink evaluation. These slides however show how GreenLink is preferred using the DRIC EA criteria:

GreenLink Better Meets DRIC Criteria
But DRIC Failed to Evaluate GreenLink
When GreenLink is Evaluated the Result is Clear

DRIC PARKWAY CRITERIA (August.07)	PREFERRED ALTERNATIVE
Reduce/eliminate the potential for the access road to act as a barrier between communities	**Green Link**
Maintain/enhance local access and maintain/enhance community connections	**Green Link**
Protect people and communities	**Green Link**
Create a green corridor for Windsor that would truly be unique, with thousands of trees and shrubs, acres of new green space and natural landscaping along the Parkway	**Green Link**
Allow for people-friendly spaces on wider bridges and short tunnels. These spaces will allow communities on both sides of the corridor to connect and provide opportunities for new trails for pedestrians and cyclists, linkages for wildlife, landscaped buffer zones, and entrance points for local traffic	**Green Link**
In combination with the planting of trees and shrubs, improve air quality, and limit the noise and the visibility of international trucks from nearby residences	**Green Link**
Separate international and local traffic, improving operations and safety for motorists	No Preference
Address the future transportation needs of the Region	No Preference

Source: DRIC August 11/15, 2007 Open House PP 48 & Frequently Asked Questions

ACCESS ROAD ASSESSMENT
GreenLink Better Meets DRIC Factors

DRIC FACTORS	PREFERRED ALTERNATIVE
Changes to Air Quality	**Green Link**
Protection of Community and Neighborhood Characteristics	**Green Link**
Consistency with Existing and Planned Land Uses	**Green Link**
Protection of Cultural Resources	**Green Link**
Protection of the Natural Environment	**Green Link**
Improvements to Regional Mobility	No Clear Preference
Cost and Constructability	Both constructable. Parkway is somewhat less $

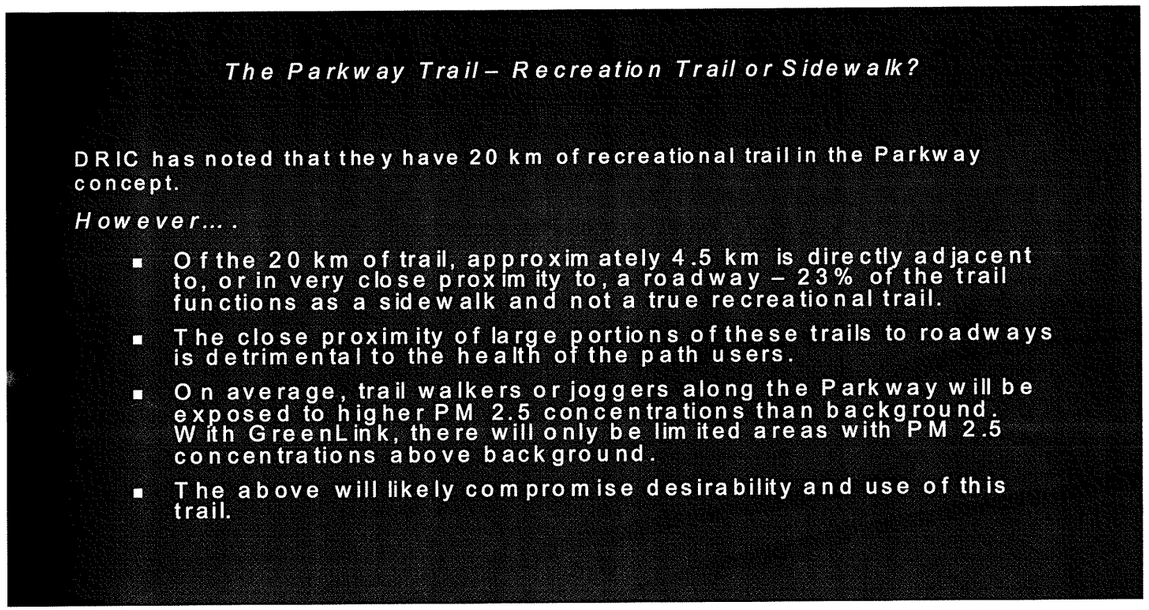
- GreenLink provides much greater protection for and connection of communities.
- Both GreenLink and the Parkway are constructable. While GreenLink is initially somwhat more costly than the Parkway, GreenLink provides more long-term benefits.
- The 2008 DRIC Windsor-Essex Parkway Provides No Real Change from the 2007 Parkway Design.

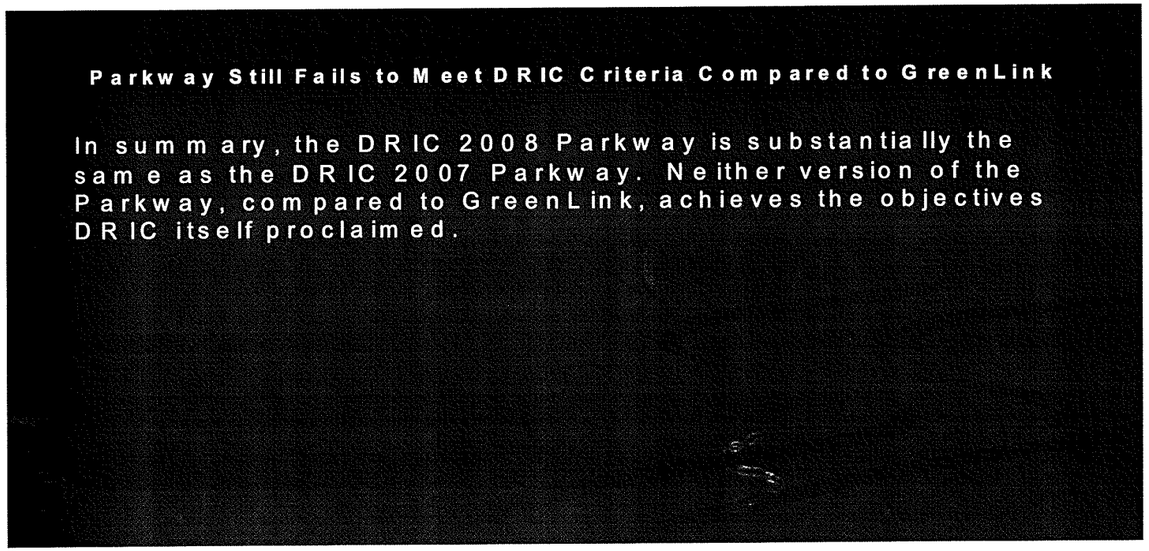
Comparing GreenLink to the Parkway

The following table compares tunnelling lengths in the original (2007) DRIC Parkway, in DRIC's 2008 revision, and in the City of Windsor's GreenLink proposal. As can be seen there is no real change between the two DRIC parkways. In comparison GreenLink provides must greater protection for and connection of communities:

Connecting and Protecting: Parkway v. GreenLink

DRIC Parkway			GreenLink	
Segment	2007 Length	2008 Length		
LaBelle	240	240 (N/C)	1020	Bellewood H.Estates
Grand Marais	120	120 (N/C)		
Pulford	130	130 (N/C)	230	Pulford
Oakwood	120	120 (N/C)	1220	Oakwood
Todd Lane	130	130 (N/C)		
Huron Church Line	220	220 (N/C)		
St.Clair College	120	120 (N/C)	240	St Clair College
Cousineau	170	120 (-50)	1000	Mt. Carmel/Villa Paradiso
Hearthwood	160	220 (+60)		
Howard	120	240 (+120)	120	Howard
New Tunnel at Spring Garden	-	220 (+220)	-	-
Total	1530 m (Approx.)	1,880m (Approx.)	3,830 m (Approx.)	





92. The following is taken from Gowlings March 31/08 letter to DRIC, attention Dave Wake. This letter also enclosed a disk which provided DRIC with extensive

technical studies carried out by expert engineering and planning consultants in which the City provided further elaboration of why GreenLink was a viable and preferred alternative. DRIC has never specifically provided to the City any professional evaluation responding to these studies or to the matters specifically elaborated in the Gowlings March 31, 2008 letter. Further, DRIC has not undertaken any evaluation of GreenLink in the draft EAR using the required EA evaluation criteria.

Excerpts from Gowlings March 31/08 letter to DRIC:

"DRIC's Initial Objectives and Commitments for the Parkway Access Road – August, 2007

In August, 2007 DRIC proposed a "Parkway" alternative for the access road which would meet the following objectives:[12]

- Reduce/eliminate the potential for the access road to act as a barrier between communities.
- Maintain/enhance local access and maintain/enhance community connections.
- Protect people and communities.
- Create a green corridor for Windsor that would truly be unique, with thousands of trees and shrubs, acres of new green space and natural landscaping along the Parkway.
- Allow for people-friendly spaces on wider bridges and short tunnels. These spaces will allow communities on both sides of the corridor to connect and provide opportunities for new trails for pedestrians and cyclists, linkages for wildlife, landscaped buffer zones, and entrance points for local traffic.
- In combination with the planting of trees and shrubs, improve air quality, and limit the noise and the visibility of international trucks from nearby residences.
- Separate international and local traffic, improving operations and safety for motorists.
- Address the future transportation needs of the Region.

Also in August 2007, the DRIC Study Team issued an "Information Sheet" entitled "The Parkway: A New Option", and in this document DRIC stated it had listened to public

[12] DRIC/URS Public Information Open House No. 5 Power Points, pg 48, and Frequently Asked Questions, August, 2007.

comments and concluded that "local residents want an access road to a new border crossing that:

- takes trucks off local streets
- reduces the amount of pollutants in the air
- improves the movement of border-bound traffic
- is not intrusive
- is state-of-the-art
- will not be determined on cost alone
- improves the quality of life
- provides a long-term solution."

The DRIC study team also stated in this August, 2007 document that the Parkway alternative, which was developed "based on refinements to the below-grade Practical Alternatives (Alternatives 1B and 2B) and reflecting the study goals and the community input received to date"

> "will allow communities on both sides of the corridor to reconnect and provide opportunities for new trails for pedestrian and cyclist and linkage for wildlife…The concept of the Parkway…can address all the requirements for the access road identified by the community and the study team", listed in the information sheet.

These were, and are, commendable objectives for the determination of the type of access roadway from Highway 401 to a new bridge crossing. However, at that time DRIC did not provide any details or reports analyzing why the Parkway concept was the preferred design to achieve these objectives, and in fact DRIC indicated it believed further study and community consultation was required in respect of arriving at the best design for the access road.

Indeed, the DRIC study team made the commitment that the Parkway option

> "will be refined further, based on comments received through public consultation….[t]he plan we are showing in August is not the final access road option. We will look to the community for their input on the look and feel of the Parkway. Community input continues to be an essential part of the DRIC study process…with community input, we can make this refined option even better."

<u>The City's Response to DRIC's Invitation for "Community Input" – GreenLink Windsor</u>

The Parkway concept is a depressed six-lane controlled access roadway (and four-lane service road at street level), with a relatively conventional cross-section and 10 crossings, labelled "land bridges", that would have some landscaping associated with them, as well as along the edges of the right-of-way in between the two directional pavement portions. These land bridges represent approximately 25% of the Parkway.

City Council took seriously the DRIC Study Team's commitment that the Parkway plan presented by DRIC in August, 2007 "is not the final access road option" and that DRIC "will look to the community for their input" and that "with community input we can make this refined option even better."

Following its review of the Parkway concept, Windsor City Council retained Parsons Brinckerhoff (PB), a major international engineering firm headquartered in New York, and Sam Schwartz PLLC, a firm specializing in transportation planning, to determine if DRIC's objectives and public wants could be more effectively achieved, and negative impacts more effectively mitigated, by an alternative design for this access road.

The mitigation plan designed by Sam Schwartz Inc. and Parsons Brinckerhoff used the same basic route, similar, but tighter property requirements, below grade cut and cover tunnels, six in total, and utilized the same highway access points as the Parkway alternative. However, their plan included much more use of cut-and-cover tunnelling adjacent to residential and institutional receptors, the creation of functional parkland over tunnels, thousands of trees, a continuous community trail system and much better linkages of communities and pedestrian access across the new highway and service roads. The plan was named "GreenLink Windsor".

The City's consultants developed the GreenLink Windsor proposal, which was presented publicly in October, 2007. The GreenLink alignment has six covered highway segments or tunnels, ranging in length from 120 m to 1,220 m, with 3 tunnels longer than 1 km, with the result that GreenLink has tunnels covering about 65% of the new access road, with landscaping on these longer tunnel roofs. The tunnel portals (entrances and exits) are located away from adjacent sensitive areas such as residential or institutional communities.

SUMMARY OF DRIC PARKWAY VS. GREENLINK WINDSOR

as presented in October, 2007

	DRIC Parkway	GreenLink Windsor
Cost	$1.5 B	$1.566-1.676 B (2007)
Vehicular Capacity to 2035	Much more than adequate	Much more than adequate
Pollution Impacts	Throughout corridor	Only at portals—controlled by foliage
Noise	Throughout corridor	Limited to non-residential areas
Creates City Links	Poorly	Unifies City
Green Opportunities	Minimal—mostly between roadways	Dramatic—more than 300 acres
Covered Length of Highway (from Hwy 3 Merge to EC Row)	1,500 metres (25%)	3,830 metres (64%)
Pedestrian Safety	Most conflicts resolved, but pedestrian bridges may not be widely used	Conflicts resolved using grade-friendly bridges
Community Cohesion	Minimal	Significant
Community Statement	Virtually none	Could become world-class attraction in and of itself
Land Values	Flat	Significant increase

WHAT GREENLINK ACHIEVES

Meets DRIC's Parkway Objectives:

Protect people and communities -- Of the approximate 1290 City of Windsor homes in the vicinity of the 6-km route, GreenLink tunnels shield approximately ±90% from the new highway.

Create a signature gateway welcoming people to Windsor, Ontario and Canada

Create a green corridor for Windsor that would be truly unique, with thousands of trees and shrubs, acres of new green space and natural landscaping along the Parkway

Allow for people-friendly spaces on wider bridges and short tunnels. These spaces will allow communities on both sides of the corridor to connect and provide opportunities for new trails for pedestrians and cyclists, linkages for wildlife, landscaped buffer zones and entrance points for local traffic

In combination with the planting of trees and shrubs, improve air quality and limit the noise and the visibility of international trucks from nearby residences

Separate international and local traffic, improving operations and safety for motorists

Address the future transportation needs of the region

Provides cross-community linkages, uniting the divided east and west sides of Highway 3/Huron Church Road. Division is intensified in the DRIC Parkway concept and is not addressed with a bored tunnel.

Enhances functional ecological linkages between environmentally protected areas.

Provides uninterrupted pedestrian and non-motorized pathways designed to blend with park surrounding.

Limits exposure to emissions to tunnel portal vicinity - tunnel portals have been intelligently sited away from sensitive land receptors.

Provides *functional* open space — active green space encourages use and collection areas.

Consistent with City of Windsor Official Plan and Environmental Master Plan.

Important Comparison Questions	DRIC Parkway	GreenLink Windsor
What is it?	• Open cut below grade highway with land bridges	• tunnelling to connect communities and protect neighbourhoods • a plan that creates parklands
Does it protect people?	• no, it divides and separates neighbourhoods	• yes, tunnels protect adjacent neighbourhoods
Does it connect communities?	• no, open cut divides communities	• yes, unites communities of Bellewood Estates, Spring Garden, Huron Estates, Oakwood Park, Villa Borghese, Pulford, Mt. Carmel, Villa Paradiso, and LaSalle
What does it do for air quality?	• distributes pollutants along corridor • no mechanical ventilation	• points exhaust away from sensitive areas • mechanically ventilated, 126 jet fans
What about traffic noise?	• impacts communities along corridor	• protects residential areas from noise
What will it cost?	• $1.5 B	• $1.566 – 1.676 B (2007)

Public Response to GreenLink

Sam Schwartz, Nasri Munfah of Parsons Brinckerhoff and Mark Galvin of the City of Windsor introduced the GreenLink Windsor proposal in a presentation to a special meeting of Windsor City Council on October 9th, 2007. The public and media attended the presentation, and the presentation was broadcast on Cogeco Cable 11 and subsequently replayed several times over the next week.

To present the GreenLink Windsor proposal to the residents of Windsor and obtain their views of the City's proposal compared to the DRIC Parkway alternative, the City and its consultant organized a series of five Public Open Houses during the week of October 15th – 19th, 2007.

Each Open House featured a series of about 30 information panels and maps showing various aspects of the GreenLink Windsor proposal and the proposed design of the tunnels and service roads adjacent to communities between Hwy 401 and the EC Row Expressway. Two TVs continuously replayed a video of the GreenLink Windsor presentation to Council.

At each Ward Open House, comment forms were handed out to the attendees with a request to fill them out at the Open House. The comment form asked for any comments, and asked the question: Do you prefer the GreenLink Windsor proposal to the *DRIC Parkway? Y_ N_; If Yes why?; If no, why not?* The questions were open ended, and respondents could give as many reasons as they liked. People were asked to provide their name and how to contact them if they had asked a question or would like more information. A copy of the comment form is included as Appendix C of this report.

GreenLink 2007 Open House Attendance and Comment Forms Received

	Location	Date	Attendance	Comments Forms
Ward 1	Massey Secondary School	October 15	~ 1500	389
Ward 2	Mackenzie Hall Cultural Centre	October 18	~450	129
Ward 3	Willistead Manor	October 17	~370	106
Ward 4	Gino A. Marcus Community Complex	October 16	~240	80
Ward 5	Forest Glade Community Centre	October 19	~435	145
TOTALS			**~2995**	**849**

The October, 2007 Open House public responses to GreenLink Windsor were overwhelmingly positive. GreenLink Windsor was clearly preferred by the vast majority (90% average from all Wards) of people who filled out the comment forms. People loved the green spaces, the links between the neighbourhoods, the use of tunnels, and the contribution GreenLink Windsor will make to the City of Windsor.

Ward	Preferred GreenLink Windsor to the proposed DRIC Parkway	Did not prefer GreenLink Windsor to the proposed DRIC Parkway	No preference	Unsure/Undecided	Other (destroyed, otherwise not counted)
Ward 1	89%	4%	5.6%	1.5%	0.4%
Ward 2	84%	5%	10%	1.5%	NA
Ward 3	94%	2%	3%	1%	NA
Ward 4	94%	1%	5%	NA	NA
Ward 5	88%	3%	8%	1%	NA

Representative positive comments included:

"Green Link is far superior to the DRIC proposal. It's what Windsor needs and deserves."

"Looks great – get it done!"

"Excellent compromise between DRIC and full tunnelling."

"I think this is a great solution for everyone."

"Big improvement over DRIC."

"Attractive, well thought out, needed, something Windsorites can whole-heartedly support and will bring a sense of pride to the citizens of Windsor."

"I am much more impressed with this proposal. Would be much better for Windsor's future."

"It is very impressive! It doesn't split the city and should move truck traffic to a border crossing with little impact to the city."

"This to me is an awesome, awesome plan. Providing green space to the City of Windsor, addressing the problem of moving the traffic, making the City a masterpiece in providing visitors a first impression - what else could we ask for."

Fifty-five comment forms were mailed to the City after the Open Houses. Fifty-two out of the 55 respondents preferred the GreenLink Windsor proposal to the proposed DRIC Parkway. Two respondents had no preference, and one respondent did not prefer the GreenLink Windsor proposal because he wants full tunnelling.

In response to the question as to why they preferred the GreenLink Windsor proposal, the reasons given were similar to the ones received at the Open Houses. In order of preference, the main reasons given included: more greenspace/better for the environment; meets community needs/more community oriented/doesn't divide City; more tunnelling; reduces pollution, and good for tourism. Of the caveats on their preference, most mentioned air quality concerns and need for scrubbers or filters; three respondents still preferred a full tunnel, and two respondents mentioned additional tunnelling; namely, at Howard, North Talbot and Southwood Lakes.

Further indications of the overwhelming resident support for the GreenLink Windsor proposal is provided by the Border Solution Survey Results. In response to the GreenLink Windsor information brochure, *We're at a crossroads – You Deserve a Greener Future*, that was mailed out to City residents and available at the Open Houses, residents were asked to call 311 to say Yes to GreenLink Windsor. In response to the question, "Are you in support of the GreenLink Windsor Border Solution?", 99% of the 3166 callers stated "yes".

Further information is found in the Open Houses Report Summary transmitted with this letter and a statistical summary of responses to the Windsor 311 Call In Survey is found as Appendix 2 to Peter Walker's Planning Analysis Report.

DRIC and City Interactions October and November, 2007 re GreenLink

As you know, you and some other DRIC team members attended these October, 2007 open houses and witnessed the overwhelming public support. The City provided GreenLink Windsor design details to DRIC in October, 2007 and City consultants and DRIC consultants met on November 14, 2007 to discuss various details of GreenLink, at which time DRIC raised technical and cost issues. If DRIC requires further copies of the GreenLink details, they are found on the City's Web site http://www.greenlinkwindsor.com.

Following that meeting, on November 29th, the City provided you with a disk containing the additional information DRIC had requested. This included:
Interfacing Meeting Notes (meeting of November 14, 2007)
Comparison of Air Quality Impacts of Various Options
Service Road Tunnel Cross Section
401 Tunnel Cross Section (including jet fan ventilation)

401 Tunnel Cross section (not including jet fan ventilation)
Comparison Table (Planning Considerations)

New Supplementary GreenLink Technical Studies Being Submitted to DRIC With This Letter

However, as DRIC had raised a number of questions at the November 14th, 2007 meeting, the City had its consultants carry out further analysis of GreenLink.

These new technical studies are as follows:

GreenLink Additional Air Quality Analyses
GreenLink Constructability and Construction Cost Estimating Review
Property Acquisition Differences between DRIC's Parkway and Windsor's GreenLink
GreenLink Economic and Fiscal Impact Analysis
GreenLink Potential Air Rights Development

These recently completed studies confirm GreenLink's attributes and demonstrate GreenLink is clearly viable, constructible, meets and exceeds DRIC criteria and provides even more benefits than originally indicated when it was presented by the City to DRIC in October. These further technical studies were carried out by Parsons Brinckerhoff (PB), and independent peer reviewers. City staff contributed to the report analyzing the differences in property acquisition requirements between the Parkway and GreenLink.

These new technical studies are being electronically transmitted to you with this letter so that DRIC can study the new information.

New Planning Analysis

The City also commissioned a Planning Analysis by one of Ontario's senior Land Use Planners, Peter Walker, FCIP, RPP comparing GreenLink and the Parkway. A copy of that Planning Analysis report is also electronically enclosed.

Mr. Walker's analysis concludes that the Parkway is not consistent with Provincial planning policies. These deficiencies are highly significant from an EA perspective, in that both DRIC's criteria for the access road announced in August, 2007 and in the ToR DRIC committed to ensure planning policy is respected in the choice of the preferred alternative. On the other hand, the Planning Analysis found that GreenLink Windsor meets and exceeds Planning policies and the DRIC access road objectives.

To quote from Peter Walker's Planning Analysis report:

"Greenlink represents good planning, and is an appropriate response to the DRIC process which recognizes that in providing an access road to a new Detroit River crossing, it is desirable to reconnect communities and provide new greenspace for residents. Greenlink is also more responsive to and in conformity with the Provincial Policy Statement for land use planning and the City of Windsor Official Plan policies than the Parkway.

The Parkway has evolved from a process that does not appear to have considered either the Provincial Policy Statement, or the provisions of the City's Official Plan in the comprehensive manner that both policy documents require. The Parkway proposal is dependent only on the transportation-related policies of both documents. That is not consistent with Provincial Policy nor the Official Plan, nor is it sufficient, since virtually every aspect of the Parkway proposal involves change to existing land use, and therefore the planned use, and such changes need to be made in conformity with the Official Plan, unless an amendment is being requested.

The Greenlink proposal, on the other hand, is a product of City Council acting in a manner consistent with the planning framework it is obligated to use. Therefore although there will be changes to the existing and planned use, the changes occasioned by Greenlink would be less intrusive and much more in conformity with the City's planning policies.

In comparing the two proposals from a Planning standpoint, we conclude Greenlink is the superior solution for the City of Windsor as a whole, and for residents of the neighbourhoods adjacent to the access road. The Parkway does not provide the scale of relief that is needed, and possible, as illustrated by the Greenlink proposal.

Greenlink is an opportunity to respond to the need for a new access route that is sensitive to the existing and future needs of the community. It has been proposed in a professional manner by the City of Windsor; it is obviously the alternative that has the most benefits to offer the community; and it is strongly supported by the community at large.

We conclude that Greenlink is far more responsive to the environmental assessment process for elements that involve the related planning process, which elements in turn relate to the impact on the existing and planned use of lands affected by the transportation aspects of the assessment."

Closing

The City is encouraged by results of the recent supplementary GreenLink studies. The results only strengthen the GreenLink option; these new studies show GreenLink provides more benefits and is even better than when first announced, and that there are clearly compelling reasons to embrace it.

One of the main concerns previously voiced by DRIC is that of cost. In response, the City commissioned a constructability/value engineering/peer review of GreenLink. The analysis included establishing project specific unit prices and used costs of material, labour, equipment, supplies, contractor and subcontractors' field and home office overheads, performance bond, and contractor's anticipated profit. This process is usually used for projects at an advanced design level and is based on a similar approach as used by contractors in bidding projects. All data used is being provided to DRIC as part of the report. Using this more in-depth information, the new report confirms that GreenLink costs are within the same scope estimated for the Parkway.

Moreover, GreenLink creates a potential tax base for development. It would be short-sighted to only look at upfront costs; people don't want to live beside a 6 lane freeway but they do want to live besides a park. Creating viable land that can be either developed after the fact or enjoyed by nearby residents, increasing the desirability of living in the

vicinity, is a main attribute of GreenLink. GreenLink is shown not only to be viable but meets and exceeds DRIC criteria and is clearly more appropriate in meeting DRIC objectives and the ToR than the Parkway.

For DRIC to choose the Parkway, which presents a design that least meets DRIC and ToR criteria compared to GreenLink, would signal significant negative implications for conforming with requirements of the OEAA. This issue would form another important topic for the requested meeting between DRIC and the City.

It is essential that the final design selected for this key component of border transportation infrastructure

- clearly fulfills objectives, goals and criteria approved by the Ontario Minister of Environment in the DRIC EA ToR,
- clearly is responsive to public "wants" DRIC identified in the EA process , and
- best meets the objectives DRIC itself identified in August, 2007 for this access route: "identifying a solution to Windsor's border transportation issues that protects the community and improves the quality of life."

We are sure your DRIC Study Team will agree these new reports raise significant considerations. City Council wishes to meet with respect to these matters before DRIC makes further decisions regarding the final design of the access road. Please contact me as soon as possible to arrange that meeting with Council as well as the pre-meeting between DRIC staff and City staff and consultants as requested at the outset of this letter."

93. The following power point slides, focussing on the community, neighbourhood and land use attributes of GreenLink, were amongst those delivered to DRIC when its officials attended at the May 26, 2008 Windsor Council meeting.

DRIC Factor – Community, Neighbourhood and Land Use

On these and other DRIC Factors, DRIC failed to compared the Parkway to GreenLink.

A comparison of GreenLink and the Parkway was specifically carried out by Peter Walker, one of Ontario's senior and most respected land use planners.

"We conclude that GreenLink meets the DRIC objectives, satisfies the DRIC access road evaluation factors and, in fact, is better than the Parkway in meeting a number of DRIC objectives, especially for those objectives that most affect the image of the access route for the City, and the lives of the residents of the City in general and those of the adjacent neighbourhoods.

While both proposals similarly separate international and local traffic and similarly address the future transportation needs of the region, we conclude that in comparison to the Parkway, GreenLink better achieves DRIC's objectives and public wants for this access road... ."

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Peter Walker's Conclusions

GreenLink:

- better protects people and communities;
- better creates a signature gateway on the access road portion of the system;
- better creates a green corridor for Windsor that would be heavily landscaped and would be truly unique;
- better allows for people-friendly spaces on the wider length of tunnelled portions, which will allow the communities and neighbourhoods on both sides of the corridor to connect, or reconnect;
- better allows for new green spaces for a wide variety of uses including, if desired, some moderate scale of built form;
- better improves air quality in this part of Windsor; and
- better limits the noise and visibility of trucks accessing the border crossing, from nearby residences.

Comparing GreenLink to the Parkway

"GreenLink represents good planning, and is an appropriate response to the DRIC process which recognizes that in providing an access road to a new Detroit River crossing, it is desirable to reconnect communities and provide new greenspace for residents. GreenLink is also more responsive to and in conformity with the Provincial Policy Statement for land use planning and the City of Windsor Official Plan policies than the Parkway.

The Parkway has evolved from a process that does not appear to have considered either the Provincial Policy Statement, or the provisions of the City's Official Plan in the comprehensive manner that both policy documents require. The Parkway proposal is dependent only on the transportation-related policies of both documents. That is not consistent with Provincial Policy nor the Official Plan, nor is it sufficient, since virtually every aspect of the Parkway proposal involves change to existing land use, and therefore the planned use, and such changes need to be made in conformity with the Official Plan, unless an amendment is being requested."

Comparing GreenLink to the Parkway

The GreenLink proposal, on the other hand, is a product of City Council acting in a manner consistent with the planning framework it is obligated to use. Therefore although there will be changes to the existing and planned use, the changes occasioned by GreenLink would be less intrusive and much more in conformity with the City's planning policies.

In comparing the two proposals from a Planning standpoint, we conclude GreenLink is the superior solution for the City of Windsor as a whole, and for residents of the neighbourhoods adjacent to the access road. The Parkway does not provide the scale of relief that is needed, and possible, as illustrated by the GreenLink proposal.

Comparing GreenLink to the Parkway

GreenLink is an opportunity to respond to the need for a new access route that is sensitive to the existing and future needs of the community. It has been proposed in a professional manner by the City of Windsor; it is obviously the alternative that has the most benefits to offer the community; and it is strongly supported by the community at large. We conclude that GreenLink is far more responsive to the environmental assessment process for elements that involve the related planning process, which elements in turn relate to the impact on the existing and planned use of lands affected by the transportation aspects of the assessment.

C. Unfortunately, and contrary to the OEAA, DRIC failed to carry out the required EA evaluation of GreenLink. Further, in arriving at its decision to select the Parkway as its preferred access road alternative, DRIC failed to observe legally binding environmental assessment process requirements imposed both by the OEAA and the Terms of Reference for the DRIC EA. DRIC's actions in respect of the Parkway choice were also unfair to the City of Windsor.

Unless DRIC agrees to carry out an appropriate, objective analysis regarding the impacts and benefits of access road alternatives in accordance with required statutory procedure and with fairness towards stakeholders such as Windsor, the DRIC's decision that the Parkway is the "environmentally preferred access road" alternative is subject to being declared a legal nullity.

94. Windsor's basic complaints in relation to the DRIC access road EA process are clearly stated:

- DRIC failed to fairly apply its own criteria to the evaluation of access road alternatives;
- DRIC refused to evaluate GreenLink as an access road alternative; and
- DRIC improperly decided that the Parkway is the preferred access road alternative without prior publication of an evaluation demonstrating that is a reasonable conclusion and without providing for public comments on the validity of that evaluation before the decision was made.
- DRIC's choice of the Parkway is not supported by DRIC's own data.

95. Instead of consulting as required, DRIC announced its Parkway decision on May 1, 2008 and has been defending it ever since. In these actions DRIC has fundamentally failed to comply with its legal obligations under the Ontario *Environmental Assessment Act* (OEAA) and the EA TOR with respect to the access road undertaking.

96. Not only does good decision-making require fair and even-handed evaluation of alternatives, this evaluation is mandated by statute, the OEAA. Consequently, Windsor expected a fair evaluation of all reasonable access road alternatives, as required by the OEEA Act and the TOR.

97. Windsor expected that DRIC would apply consistent criteria to each alternative. Windsor expected that DRIC would fairly present the analysis of impacts, costs and benefits of each alternative to stakeholders before DRIC made a decision.

Windsor expected DRIC to keep its promises regarding consultation and participation. DRIC failed on every count.

98. DRIC's failure to meet Windsor's expectations in not simply an indication of poor planning or consultation practices, it is also a matter of law. Each point of friction between DRIC and frustrated stakeholders has its roots in a statutory violation, in a failure by DRIC to abide by the terms of the TOR and the OEEA.

Fundamental Requirements of the OEAA

99. Section 6.1 of the OEAA prescribes the requirement of an "environmental assessment" which are binding on DRIC/MTO as proponents of the access road undertaking:

(Ontario) ***Environmental Assessment Act***, Revised Statutes of Ontario, 1990, chapter E 18

Preparation of environmental assessment
6.1 (1) The proponent shall prepare an environmental assessment for an undertaking in accordance with the approved terms of reference. 1996, c. 27, s. 3.

Contents
(2) Subject to subsection (3), the environmental assessment must consist of,

(a) a description of the purpose of the undertaking;

(b) a description of and a statement of the rationale for,

(i) the undertaking,

(ii) the alternative methods of carrying out the undertaking, and

(iii) the alternatives to the undertaking;

(c) a description of,

(i) the environment that will be affected or that might reasonably be expected to be affected, directly or indirectly,

(ii) the effects that will be caused or that might reasonably be expected to be caused to the environment, and

(iii) 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 alternative methods of carrying out the undertaking and the alternatives to the undertaking;

(d) an evaluation of the advantages and disadvantages to the environment of the undertaking, the alternative methods of carrying out the undertaking and the alternatives to the undertaking; and

(e) a description of any consultation about the undertaking by the proponent and the results of the consultation. 1996, c. 27, s. 3.

100. Just one example of DRIC's failure to comply with this fundamental requirement of the OEAA is found in the fact that DRIC did not provide any analysis comparing, e.g. how many people and homes in Windsor and LaSalle within, e.g. 150 of an access road which incorporated tunnelled sections would be saved from exposure to unhealthy, excessive air impacts compared to the Parkway, which does not have real tunnels, but only overpasses/land-bridges which cannot prevent off ROW emissions of traffic contaminants.

101. Another example of DRIC's failure to carry out the requirements of an environmental assessment is that DRIC did not provide any analysis stating the concentrations of hazardous particulate matter that people using the Parkway trails and Parkway greenspace would be exposed to compared to their exposure on trails and greenspace shielded from such contaminants by tunnelled sections, such as those provided in GreenLink.

102. Quite incredibly, DRIC reports contain data which, when read by air quality experts, demonstrates that the Parkway will produce high exceedances of PM 10 and PM 2.5 at Parkway land bridge portals, but DRIC fails to provide the required "description" of the impacts as required by s. 6.1 (2)(b) of the OEAA

> "… the environmental assessment must consist of … a description of …
>
> (i) the environment that will be affected or that might reasonably be expected to be affected, directly or indirectly,
>
> (ii) the effects that will be caused or that might reasonably be expected to be caused to the environment

Further, the DRIC draft EAR fails to comply with s. 6.1(2)(d) of the OEAA which requires an environmental assessment to include:

> (d) an evaluation of the advantages and disadvantages to the environment of the… alternative methods of carrying out the undertaking and the alternatives to the undertaking

In this instance the missing comparison would be the contaminant levels greenspace users of the Parkway land bridges would be exposed to compared to greenspace above or adjacent to real tunneled sections.

103. Most incredibly DRIC failed to abide by fundamental requirements for an environmental assessment set out in s. 6 of the OEAA because it failed to evaluate GreenLink as an access road alternative method.

OEAA s. 6: "the environmental assessment must consist of,

(b) a description of and a statement of the rationale for,

(i) the undertaking,

(ii) **the alternative methods of carrying out the undertaking**, and

(iii) the alternatives to the undertaking;

(c) a description of,

(i) the environment that will be affected or that might reasonably be expected to be affected, directly or indirectly,

(ii) the effects that will be caused or that might reasonably be expected to be caused to the environment, and

(iii) 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 alternative methods of carrying out the undertaking** and the alternatives to the undertaking;

104. DRIC's various access road alternatives, as well as GreenLink, are "alternative methods of carrying out the undertaking" i.e. alternative methods of extending the 410 Highway to the new bridge.

105. DRIC clearly admits in its draft EAR that "The GreenLink Windsor proposal could be considered an " intermediate" alternative between The Parkway and the full 6 km tunnel that was assessed previously".

106. But DRIC failed to assess GreenLink in accordance with the requirements of s. 6 of the OEAA or with DRIC's more refined EA criteria used by DRIC in evaluating all alternative access road options as set out in the DRIC Terms of Reference.

107. Rather than doing what it is legally required to do in assessing alternative access road options, and apply the specific factors and criteria prescribed for that evaluation in the TOR, DRIC's "evaluation" of GreenLink consists of

- attack sheets posted on DRIC's web site which inaccurately and without foundation maligned GreenLink, using criteria not found within the TOR; and
- providing a biased and inaccurate discussion of GreenLink on one page of its draft EAR.

108. DRIC's approach to GreenLink fundamentally contravenes its own TOR which states:

> **"The evaluation of alternatives is an integral component of the integrated environmental study.**
> **A sound evaluation process is based on five key principles:**
> **1) Comprehensive**
> **2) Understandable**
> **3) Replicable**
> **4) Traceable; and**
> **5) Participatory" [TOR, pg 25, May, 2004]**

109. DRIC has published nothing to demonstrate it even attempted this required evaluation of GreenLink; indeed DRIC admitted to Windsor Council on May 26, 2008 that it had not done so.

Other Significant EA Process Principles And Issues

110. The Ontario *Environmental Assessment Act* has been in place since 1975. Over the last 30 + years members of the former Ontario Environmental Assessment Board (now the Environmental Review Tribunal) and Joint Boards (usually comprised of EAB/ERT members and OMB members) have established clear principles in terms of the obligation of proponents subject to the OEAA.

111. For example, in a 1994 decision refusing to accept the environmental assessment of the Ontario Waste Management Corporation, a provincial crown corporation seeking to establish a new hazardous waste disposal site, the Joint Board said:

- "For us to accept the environmental assessment, we must be satisfied that there is a need for the undertaking, that the reasonable alternatives have been identified and have been evaluated in a systematic way, and that the outcome of the evaluations is the most environmentally suitable alternative" (p. 2-8).

- "the OWMC has the onus of establishing, on the balance of probabilities, that the preferred system is preferred to the alternatives, and it has not done so" (page 5-73)

112. DRIC's EAR clearly fails to meet these criteria,

- as "reasonable alternatives" which must include GreenLink based on DRIC's admission at page 3-21 of the draft EAR, have not "been evaluated in a systematic way", as admitted by senior DRIC and DRIC officials to Windsor Council on May 26, 2008; and

- without evaluating GreenLink in "a systematic way" DRIC cannot establish that the Parkway is preferred to other GreenLink.

113. In 1995 another Joint Board decision refusing acceptance of an environmental assessment for a proposed undertaking by Steetley Quarry to establish and close a solid waste disposal site in an existing quarry, the following similar principle to that in the OWMC case was stated:

"Unequal treatment of alternatives and advantages and disadvantages would be destructive of the process of a balanced analysis.

Wide differentials in available data on which evaluation of options can be based contravenes the purpose of s. 5.3 (now s. 6.1 (2) of the OEAA."

114. In another decision of the Joint Board (North Simcoe) the environmental assessment was not accepted and the undertaking was denied approval. In commenting on the evaluation of alternative sites, the Board stated:

"The major defect is the proponent's failure to apply the same level of detail to the 7 sites before choosing the preferred site. There seems to be a predisposition to have Site 41 selected – a predisposition that indicates bias."

DRIC's EA Failures in Consideration of Alternatives

115. Contrary to the requirements of the EA Act, DRIC did not identify and evaluate all reasonable alternatives in arriving at a preferred access road alternative for the highway connection component of the international crossing.

116. Practical Alternatives 1A, 1B, 2A, 2B and 3 presented at the PIOH 3 meetings in March 2006 represent generic alternatives that each assume a consistent highway configuration along the entire length of the corridor. The Parkway proposal presented at the PIOH 5 meetings in August 2007 represents a different kind of alternative – a composite configuration that adapts a basic configuration – a depressed highway – to include limited tunnelled sections, buffering, and different relationships between the access road and the re-configured Highway #3 at different locations. While there is range of potential alternative design solutions for different sections along the access road and the access road as a whole, DRIC presented only one composite solution (subsequently further refined) and failed to adopt an environmental assessment planning approach to developing, consulting on and evaluating a reasonable range of composite solutions. The Parkway alternative has been further optimized and mitigated since PIOH #5, bringing the level of detail even further beyond that of the original five access road alternatives, but again this was not done through an alternatives-based EA planning process as required by the TOR.

117. DRIC indicates on page 3-22 of the draft EAR that it solicited comments on its Parkway in order to identify how the Parkway could be improved and that it had reviewed and assessed the City's material on that basis. This appears to suggest that since the DRIC did not request new alternatives for consideration, it did not have to give consideration to proposals for new alternatives.

118. However, this approach runs counter to the EA principle that all reasonable alternatives be evaluated. The DRIC team never indicated that the GreenLink

alternative was unreasonable and in fact admitted it is an "intermediate alternative" between the Parkway and the full 6 km tunnel alternative. The evaluation of alternatives cannot be limited by confining consideration of submissions to refinements to alternatives already identified, rather than new alternatives.

119. Because it did not evaluate a reasonable range of practical alternatives or take an alternatives approach in developing its preferred alternative, DRIC has not demonstrated that it has selected the alternative with the "best overall balance of transportation engineering, individual factor area impacts and overall environmental impacts, including input that has been received through consultation on those issues", as required by the TOR.

120. While DRIC says GreenLink was more expensive than the Parkway, DRIC did not present any evaluation of the long-term savings in health costs and community and environmental benefits that could be associated with a tunneled access road. Thus DRIC failed again to meet requirement of s. 6 of the OEAA which requires an environmental assessment to include an "evaluation of the advantages and disadvantages to the environment of…alternative methods of carrying out the undertaking". Under the OEAA "environment" is broadly defined to include not only the natural environment but "the social, economic and cultural conditions that influence the life of humans or a community".

121. In any event, DRIC has always claimed that cost is not the only factor in the evaluation it must make (for example, in the Canadian Frequently Asked Questions handout provided at the time of PIOH 3 in March 2006 DRIC states that "Cost is only one of seven important factors we are considering throughout the EA process.") DRIC's TOR treated cost as a comparative factor with its own assigned weight and not an exclusionary factor (i.e. it cannot cause alternatives to be discarded based on fixed cost limits alone).

122. The influence of cost in relation to other environmental benefits on the selection of a preferred alternative can only be established by conducting a comparison between the Parkway and other alternatives at an appropriate level of detail and using a systematic and traceable methodology, and DRIC did not do this.

123. The DRIC environmental assessment leading to its decision to choose the Parkway as the preferred alternative access road lacks consistency. The Parkway was optimized and taken to a greater level of detail than the other alternatives. For example in the overall assessment under the "Impact on Community Character/Cohesion" factor in Exhibit 8.15 the draft EA Report states that "The end-to-end tunnel does not provide the same benefits to community character (presumably referring to the Parkway) as it does not improve linkages across the Huron Church/Highway 3 corridor over the current condition and reduces visibility for local businesses". However, by the time DRIC reached that conclusion preferring the Parkway, DRIC designed the Parkway and then further enhanced it to specifically incorporate linkages.

124. There are clearly greater opportunities to further explore linkages with an end-to-end tunnel option than with only limited tunnelling, but DRIC did not do this. If this work had been done the tunnel option may well have displayed benefits over and above those indicated in the evaluation. These benefits would also have been applicable to GreenLink, but they were not evaluated. Since GreenLink incorporates more tunnelling adjacent to sensitive areas than the Parkway, these benefits would potentially accrue to the GreenLink to a greater extent than for the Parkway.

125. The inequitable nature of the evaluation of the Parkway against the other access road alternative is further illustrated by inconsistencies in the DRIC air quality assessment, as discussed in the section of this submission dealing with air impacts.

126. Prior to the comparison between the Parkway and other alternatives the DRIC team had taken steps to add further air quality mitigation, by substantially widening the Parkway right of way compared to other alternatives, which requires purchasing residences and displacing more people than other alternatives and without optimizing the other alternatives to a similar extent.

127. The basis for the air quality evaluation of the Parkway versus the other alternatives was also different, with predictions of air contaminants being made at the edge of a green buffer for the Parkway, and from the highway edge for the other Practical Alternatives.

128. As the Joint Board has indicated, it is critical in an EA that the alternatives be developed to a similar level of detail and that they be optimized in a similar way for the comparison to be fair. The further development of the Parkway alternative as described prevents a fair comparison with the other alternatives.

DRIC Consultation and Fairness Failures – Violations of the TOR

129. The approved TOR goes beyond the requirements of the EA Act in stating that a principle of the evaluation is that it be "participatory". The understanding that a participatory process is of a higher order of magnitude than "consultation" was confirmed by the MOE's 2007 Consultation Code of Practice. It defines "Participation" as:

> **"An extension of consultation where directly affected persons become joint partners in the design and implementation of projects. They participate in helping proponents "make" choices. Ground rules and simple agreements specifying concerns may be made between the proponent and directly affected persons, which will require joint planning and necessitate public input."**

130. While the City of Windsor was consulted as part of the DRIC EA, it cannot be said that it was given the opportunity to participate in decision making. Throughout the process the DRIC team has attempted to frame the scope of consultation as discussion of refinements to alternatives already generated, rather than one of ensuring the full range of alternatives is evaluated or providing the data to allow participation in decisions before they are announced.

131. The approved TOR also goes beyond the requirements of the EA Act in requiring that consultation on the analysis of practical alternatives take place before a decision on the preferred practical alternative is taken. However, DRIC ignored and avoided that requirement.

132. In August 2007 the DRIC team presented an analysis of the five access road alternatives initially identified for consultation, but at the same time introduced a new alternative for comment – the Parkway – without including it in the evaluation of the original alternatives (DRIC PIOH 5 display boards, July 2008).

133. At the next round of consultation, PIOH 6 in May/June 2008, DRIC presented a modified version of the Parkway – the "Windsor-Essex Parkway" – as the preferred alternative -- without having consulted on the evaluation of that alternative.

134. This approach undermined the requirement of the TOR that there be an opportunity for informed consultation before a decision is made by DRIC as to the preferred option. The manner in which DRIC decided in private and announced its decision, then saying it was willing to consult, fails to comply with the TOR commitment that the most stringent of the range of regulatory requirements would be incorporated into the process, and it is contrary to the required process described in the TOR.

135. For example, Exhibit 1.3 of the approved TOR – "Schematic Illustration of the Integrated NEPA/OEAA/CEAA Process Environmental Study Process for Detroit River International Crossing", indicates that there will be a Public Hearing under NEPA and public consultation under the *Ontario EA Act* after the assessment of practical alternatives i.e., the access road alternatives, and before a recommended alternative is selected.

136. This approach is said to be based on the U.S. NEPA process, however since it is incorporated into the approved TOR under the Ontario EA Act and since the EA for the access road must be prepared in accordance with the TOR, it is also binding under the Ontario process.

137. Section 3.3.2 (b) of the approved TOR, "Evaluation of Practical Alternatives", provides a fuller description of the formal hearing under NEPA that would be held prior to the selection of a preferred practical alternative, and the corresponding third round of Public Information Open Houses (PIOH) to be held

in Ontario to provide a similar opportunity to comment on the analysis of these alternatives.

138. In Section 5, "Consultation for the Integrated Environmental Study Process", the TOR again describes opportunities for stakeholders to be consulted following the analysis of practical alternatives and prior to the selection of a preferred practical alternative, and during consideration of selection of the preferred Concept Design Alternative.

139. Section 5.1 of the TOR, "Public Consultation During the Integrated Environmental Study Process", states:

> "Within the integrated environmental study process, public consultation will involve reviewing, commenting and providing input to the technical and environmental work undertaken and to provide input to the public consultation process. The proposed consultation plan encourages proactive consultation, which will allow comments and views of the public to assist in influencing the study and the recommendations thereof."

140. Exhibit 5.1 to the TOR "Proposed Public Consultation During Integrated Environmental Study Process", again shows consultation following the analysis of practical alternatives and prior to the selection of the preferred practical alternative. However, DRIC did the reverse. DRIC released no evaluation of the Parkway before selecting the Parkway as its preferred alternative and only subsequently attempted to justify how that decision was reached.

141. Another violation of the TOR occurred in respect of s.5.2.4 in which DRIC had made this commitment: "at the request of any Council, the Partnership will attend additional Council meetings to discuss project related issues."

142. Windsor Council made a request to DRIC that it attend to provide information on project related issues on February 1, 2008 and subsequently repeated this request on a number of occasions, the last of which was on April 28, 2008. However, DRIC avoided attending Windsor Council until May 26, 2008, more than three weeks after the announcement that the Windsor-Essex Parkway is the preferred option. This strategic delay in responding to the City's request comprises a direct contravention of the commitment contained in the approved TOR. It also evidenced DRIC's clear bias against Windsor and GreenLink.

DRIC Introduces the Parkway Alternative

143. DRIC also used Open House #5 to propose a new alternative called "the Parkway", and it would become the sixth and final practical alternative examined by DRIC as part of the access road environmental assessment process.

> "A Parkway alternative has been developed, based on refinements to the below-grade Practical Alternatives…and reflecting the study goals and the community input received to date…this is a new option, never fully presented to the public prior to Public Information Open Houses of August 2007…" (DRIC Study Team, "The Parkway: A New Option", August 2007)

144. The Parkway was also the sole apparent focus of the DRIC's ongoing evaluation after August 2007, despite the nominal existence of six practical alternatives, for two reasons.

> "A Parkway alternative was developed and presented to the community for feedback in August 2007. This alternative was based on refinements to the below-grade alternatives and reflected the study goals and the public feedback received to date. The Parkway **subsequently** underwent technical analysis to the same level of detail as the initial five Practical Alternatives…."

DRIC, "The Windsor-Essex Parkway: How We Got Here", May 2008 (emphasis added)

145. Like the two remaining practical alternatives, the Parkway was also a below-grade access road. The Parkway included a series of 10 bridges, averaging 141.5 metres in length, designed to allow people to cross from one side of the access road to the other, above ten lanes of traffic.

146. Since August 2007, DRIC has called these structures "tunnels". In engineering terms, however, they are effectively landscaped highway overpasses, designed for foot traffic. DRIC's own consultants acknowledge this reality:

> "The tunnel structures are typical of most overpass structures…"
>
> (Draft Practical Alternatives Evaluation Working Paper: Air Quality Impact Assessment, May 2008, at pg. 37)

147. DRIC presented the Parkway as an alternative that had been developed in response to community concerns, and one that would be refined, evaluated and improved through further community consultation.

> "**Community input is what led to the Parkway** alternative and with community input we can make this option even better." (DRIC, Frequently Asked Questions, DRIC PIOH #5, pg. 2)

148. DRIC indicated that the Parkway had been designed to address "all of the requirements of the access road identified by the community". Eight specific community concerns were identified, which centred on the need to improve the quality of life for Windsor residents, take trucks off the street, and reduce air pollution. DRIC noted that residents did not want a solution determined on the basis of cost alone.

"...We listened to your comments, feedback and ideas. Local residents want an access road to a new border crossing that:

- takes trucks off local streets;
- improves the movement of border-bound traffic;
- is state-of-the-art;
- improves quality of life;
- reduces the amount of pollutants in the air;
- is not intrusive;
- will not be determined on cost alone;
- provides a long-term solution

(DRIC Study Team, "The Parkway: A New Option", August 2007, emphasis in the original)

149. Not only was the Parkway expected to do better at meeting community concerns, but it was also "expected to provide many advantages" over the other Practical Alternatives, measured against the evaluation factors and criteria in the TOR.

150. DRIC made these assertions notwithstanding the fact that the Parkway was just a concept in August 2007, and had not yet been evaluated, whereas the five practical alternatives had been "exhaustively studied".

> "A Parkway is expected to provide many advantages **over the other options that were exhaustively studied**…." (DRIC, Frequently Asked Questions, DRIC PIOH #5, pg. 3)

151. The public was presented with a new alternative and with a promise. The Parkway would be evaluated in the same level of detail as the original five practical alternatives, before any decisions were made by DRIC about which alternative was the best for Windsor.

> "**What's Next? Conduct detailed analysis** of enhanced Parkway alternative…" (pg. 18)
>
> "…Before any final decisions are made, the Parkway **will be analyzed** in the same level of detail as the initial five Practical Alternatives…(DRIC, Power Point, Open House No. 5, "DRIC EA August 14 & 15, 2007", pg. 18 & 28, emphasis added)

152. DRIC also assured the public that the Parkway was "not the final access road option". Rather, the Parkway was to be refined and improved upon through ongoing public consultation.

> "The plan we are showing in August is **not the final access road option**. We will look to the community for their input on the look and the feel of the Parkway. Community input continues to be an essential part of the DRIC study process." (DRIC, Power Point, Open House No. 5, "DRIC EA August 14 & 15, 2007" at pg. 18, emphasis added)

153. Stakeholders were invited to help DRIC "make this refined option even better."

> **"Community input helped lead us to the Parkway and with community input, we can make this refined option even better**..." (DRIC, Power Point, Open House No. 5, "DRIC EA August 14 & 15, 2007" at pg. 18, emphasis added)

Windsor Proposes GreenLink Alternative (October 2007)

154. In October, 2007 Windsor responded to DRIC's call for input by proposing an access road alternative design referred to as "GreenLink Windsor".

155. Briefly, GreenLink is an access roard alternative which constitutes a blend between Alternative 3, the full end-to-end tunnel, and the below-grade alternatives (1B and 2B), in that it proposed to tunnel 65% (or 3.8 km) of the most sensitive stretches of the access road.

156. GreenLink's long tunnels were designed to mitigate the adverse effects of the access road, including air pollution, noise and dust impacts, and the need to expropriate homes and businesses. The Parkway simply spread these impacts out along the length of the corridor and attempted to buffer residences using greenspace.

157. GreenLink's design effectively eliminated these impacts for the communities around the tunnels, by keeping vehicle contaminants buried underground for stretches of up to 1.2 kilometres at a time. In addition, the portals to the GreenLink tunnels, where any dust or air pollutant impacts could emerge, were purposefully located away from residential areas and placed in zones of least impact (vacant and industrial land).

158. As important as cutting off the source of air pollution and nuisance impacts, however, GreenLink proposed to knit together a divided community.

159. In place of the existing 4-lane Huron Church corridor, GreenLink proposed to bury the ten-lane access road under greenspace and parks in stretches of up to 1.2 kilmetres in length. By creating real, usable greenspace and parks above the kilometres-long tunnelled sections of access road, GreenLink would unite communities, recreation centres, schools and amenities on either side of the corridor that are currently divided.

160. Windsor presented GreenLink at a City Council meeting on October 9, 2007, through cable television, and at a series of five Open Houses attended by close to 3,000 residents. Public responses at Windsor's open houses were overwhelmingly in favour of GreenLink, with 90% preferring GreenLink and just 3% preferring the Parkway. (The remaining 7% were undecided or had no

preference). Mail-in forms received later continued this pattern, with 94% in favour of GreenLink.

(See letter from D. Estrin to Mr. Dave Wake, DRIC, March 31, 2008.)

161. DRIC was invited to participate in the open houses held by Windsor, and was presented with design details in relation to GreenLink. Windsor also made its technical team of consultants available to meet with DRIC's consultants, on November 14, 2007, and provided additional information by letter and CD on November 29, 2007.

162. Windsor also commissioned a comprehensive and costly series of technical studies by Canadian and international experts, which were transmitted to DRIC in March 2008, listed below.

- Parsons Brinkerhoff Americas Inc. "Detroit River International Crossing, Proposed Highway 401 along Talbot/Huron Church Road Corridor, Windsor GreenLink: Additional Air Quality Analyses", March 13, 2008.
- Parsons Brinkerhoff Americas Inc. "Detroit River International Crossing, Proposed Highway 401 along Talbot/Huron Church Road Corridor, Windsor GreenLink: Constructability and Construction Cost Estimating Review", March 20, 2008.
- Parsons Brinkerhoff, "Differences in Property Acquisition Requirements Between DRIC's Parkway and Windsor's GreenLink", March 19, 2008.
- Parsons Brinkerhoff, "Detroit River International Crossing, Proposed Highway 401 along Talbot/Huron Church Road Corridor, GreenLink Economic and Fiscal Impact Analysis", March 21, 2008.
- Parsons Brinkerhoff, "Detroit River Internationl Crossing, Proposed Highway 401 along Talbot/Huron Church Road Corridor, GreenLink Potential Air Rights Development", February 25, 2008.
- "Planning Analysis of City of Windsor: GreenLink Windsor Proposal for the Access Road Link Between Highway 401 and a Crossing of the Detroit River:, Peter R. Walker, FCIP, RPP, Walker, Nott, Dragicevic Associates Limited, March 17, 2008

(Letter from D. Estrin to Mr. Dave Wake, DRIC, March 31, 2008)

DRIC Refuses to Consult with Windsor (November 2007 – April 2008)

163. Between the release of the GreenLink alternative in October 2007, and May 2008, Windsor made repeated requests for staff and Council-level meetings with DRIC.

164. Windsor's objective was to ensure that DRIC had formally evaluated GreenLink pursuant to the TOR, so that a proper, OEAA required evaluation of the advantages and disadvantages was made of GreenLink and the Parkway. As noted in a letter from Windsor to DRIC, the City indicated a meeting was required so that DRIC could demonstrate that

> "…..an objective comparison of GreenLink and the Parkway is being made, as required under the TOR and the OEAA, prior to a preferred design for the access road being chosen and announced"
>
> Letter from D. Estrin to Mr. Dave Wake, DRIC, March 31, 2008 at pg. 1-2.

165. Windsor's repeated requests for a meeting with DRIC included a formal City Council resolution issued February 11, 2008 and transmitted by the City Clerk to DRIC on March 3, 2008.

166. DRIC is obligated pursuant to the TOR to meet with Council upon request.

> "Municipal councils are key stakeholders….**At the request of any Council, the Partnership will attend additional Council meetings** to discuss project related issues." (Detroit River International Crossing, Environmental Assessment Terms of Reference, as amended July 7, 2004, at pg. 51)

167. DRIC committed in a letter dated April 15, 2008 to arrange a meeting "as soon as possible", re-iterating its commitment to consult in relation to the selection of a Preferred Alternative:

> "I can assure you of our ongoing commitment to an open and transparent decision-making process….
>
> The selection and evaluation of the various alternatives is a continuing process and the DRIC study team welcomes Windsor's input."
>
> Letter to D. Estrin from D. Wake dated April 15, 2008, emphasis added)

168. It should be noted that, at this stage, eight months had passed since the announcement of the Parkway as a new alternative. No evaluation of the Parkway had been released to stakeholders for review, as DRIC had promised in August 2007.

169. Notwithstanding the DRIC commitment to the City made in April, the promised meeting was not arranged prior to the DRIC's selection and announcement of the preferred alternative.

DRIC Attacks GreenLink (April 25- May 1, 2008)

170. Instead of meeting with Windsor as requested, DRIC publicly released three "Fact Sheets" highly critical of GreenLink, and posted them on its Web site.

The first DRIC Fact Sheet was dated April 25, 2008 and titled "DRIC Study Team's Assessment of GreenLink Proposal's Highway Specifications". Without foundation, this claimed GreenLink would endanger first responders and highway users with "sub-standard" shoulder widths and slopes, and allow for flooding at five times the rate of the Parkway. These assertions were false.

171. The second Fact Sheet was dated April 28th and titled "DRIC Study Team's Review of GreenLink Cost Estimates", and suggested that GreenLink had vastly underestimated the project's cost, and inferred that GreenLink should be rejected by taxpayers.

172. The title of the third Fact Sheet, issued May 1, 2008 conveyed DRIC's theme: "**Why Not GreenLink**". Again, it contained false information.

173. These "Fact Sheets" were issued without so much as a courtesy call or email to Windsor, and the allegations that they contained were never put to Windsor for a response. They were the EA equivalent of negative election "attack ads", designed to unfairly and maliciously denigrate GreenLink.

174. DRIC issued these in lieu of the consultation and dialogue that was promised by DRIC, and which was required by law pursuant to the TOR and the EA Act. The issuance of these "Fact Sheets" is simply unacceptable behaviour for a provincial Ministry, obligated by law to conduct an independent, transparent, and even-handed evaluation of all alternatives, especially when also required to consult with stakeholders.

WE Parkway Selected as DRIC's Preferred Alternative Prior to EA Evaluation

175. Just three days after DRIC's second attack on GreenLink was released to the media, DRIC, MTO and two senior provincial cabinet ministers from Windsor held a press conference to announce the selection of the Preferred Alternative, the Windsor Essex Parkway.

176. The WE Parkway was an updated version of the Parkway as presented in August 2007 (in other words, DRIC selected the sixth and final practical alternative).

177. Windsor was advised on April 30, at 12:07 pm that a press conference would be held at 9:30 am the next day. In contrast, "friendly" municipalities and industry associations were briefed in advance, and offered supportive press statements.

178. At the time of DRIC's announcement, neither the EAR detailing the DRIC's evaluation, nor the underlying technical studies, had been released for stakeholder review and comment.

179. Notwithstanding the lack of underlying studies and the lack of a draft EAR, DRIC insisted that decision had been made, and its analysis completed, by May 1, 2008:

> **"It's really a case of just dotting the 'i's' and crossing the 't's'…** We can talk a little bit more about the specifics **but I need to stress and emphasize that the analysis is complete**…"

Fausto Natarelli, Director, MTO Windsor Border Initiatives Implementation Group, Transcript of DRIC Announcement of the Windsor-Essex Parkway as the Preferred Alternative, May 1, 2008

180. As of May 1, 2008, the five original Practical Alternatives were all discarded.

Release of the Draft Environmental Assessment Report (November 12, 2008) – Further DRIC Process Unfairness

181. The draft EAR itself was not released until November 12, 2008, more than six months after DRIC announced its preferred alternative.

182. As of November 12, 2008, DRIC had not released 11of twenty technical reports used to conclude the Parkway was preferred. The EAR indicated that those technical reports were "in the process of being finalized", and would "be made available with the final EA report submission".

183. The final EA Report submission referenced above is scheduled for the end of December 2008. The 30-day public comment period on the draft EAR ends December 12, 2008, before the release of most of the missing technical reports listed as "pending".

184. One of the technical reports not available for stakeholder review even as of December 12, 2008 is the report that documents DRIC's comparative analysis of the Practical Alternatives. This document was promised to stakeholders when the Parkway was first announced in August 2007, and was to have been released after the analysis of the Parkway was completed. According to DRIC, this analysis was complete by May 1, 2008, prior to the selection of the Preferred Alternative.

185. As a result of the timing outlined above, stakeholders have been required to provide public comment on the draft EAR without having access to a substantial component of the underlying technical analyses from which the conclusions in the EAR are derived.

186. This continues the pattern of unfair and unacceptable practice DRIC established at Open House #5 (August 2007), when stakeholders were presented with and "consulted on" the comparative evaluation of the five Practical Alternatives, without access to any of the underlying data.

187. In addition, stakeholders are being presented with DRIC's analysis of Practical Alternatives and the selection of the Preferred Alternative simultaneously. In other words, there has been no Open House held between DRIC'ss Open House 5, announcing a new Parkway concept without any analysis, and Open House 6, selecting it as the Preferred Alternative. This is the very opposite of what is required by DRIC's own TOR.

188. The TOR required DRIC to present the results of its analysis of the Practical Alternatives to stakeholders for feedback, and to consider that feedback, *before* selecting a Preferred Alternative.

189. The TOR figure entitled "Exhibit 1.3 – Schematic Illustration of the Integrated NEPA/OEAA/CEAA Process Environmental Study Process for the Detroit River International Crossing" is a flow chart. Exhibit 1.3 shows the step "Assess Practical Alternatives" as coming before "Public Information Open House / Consulation Under OEAA". Only after the Practical Alternatives have been assessed, and an Open House held to consult on that assessment, is DRIC to proceed to the step of "Select Recommended Alternative".

190. The text of the TOR is explicit. The purpose of PIOH 3 (in the TOR) is to present stakeholders with the analysis of all practical alternatives, to solicit and consider input thereon, and only then to select the preferred alternative.

> "Prior to selecting the preferred alternatives….a draft EIS will be prepared and circulated…The draft EIS will provide the information used to generate the study area, the evaluation of illustrative alternatives, as well as the analysis of practical alternatives. A formal Public Hearing will be arranged in the U.S. to provide interested parties the opportunity to comment upon the work documented in the draft EIS.
>
> The third round of Public Information Open Houses (PIOH) will be arranged in conjunction with the U.S. Public Hearing to provide [Canadian] stakeholders a similar opportunity to comment on the analysis of practical alternatives….
>
> Upon completion of the formal Public Hearing and the third round of Public Information Open Houses, the Partnership will consider the comments received, refine the alternatives and the analysis as required, and undertake the evaluation of the practical alternatives…
>
> The fourth round of Public Information of Open Houses will provide interested parties the opportunity to comment on the selected preferred practical altearntive(s)." (pg. 40-41)

191. TOR Exhibit 5.1 further demonstrates that PIOH 3 is premised on the release of the draft EAR (or a document equivalent thereto) to the public, in order to facilitate the process of consultation described above. (pg. 46).

192. Comparing the actual process to the process required by the TOR, DRIC failed on three grounds. DRIC failed to release the EAR or an equivalent document in

order to facilitate consultation, failed to present its analysis of the practical alternatives to stakeholders for comment before selecting the Preferred Alternative, and failed to consider public input in relation to the analysis of alternatives before choosing its Preferred Alternative.

193. Instead of the process set out in the TOR, DRIC followed the model of "announce and defend", releasing its analysis of the six Practical Alternatives together with its selection of the WE Parkway as the Preferred Alternative.

DRIC's Unfair and Dismissive Treatment of GreenLink

194. Windsor designed GreenLink to meet DRIC's own evaluation factors and criteria and, in particular, to better address the community concerns identified in August 2007 as the motivation for development of the Parkway.

195. Windsor feels strongly and its studies demonstrate that GreenLink does a better job of meeting DRIC's own criteria than does the WE Parkway, and has worked hard to show that this is objectively the case. Windsor has done more than "show up" to the table and offer comments. Windsor has hired competent, expert advisors, spent considerable public resources to participate constructively and usefully, and respected DRIC's own ground rules regarding the process.

196. In return, all that Windsor has asked for is a fair hearing. "Show us", Windsor has said, "that the Parkway is superior to GreenLink, using your own criteria. Show us the analysis". DRIC has refused.

197. An evaluation of the advantages and disadvantages to the environment of GreenLink as compared to the Parkway has never been presented to stakeholders, and will not be presented to the Minister of Environment when the EAR is submitted for approval, because it has never been done. This is a specific and fundamental violation of s. 6.1(2)(d) of the OEAA.

198. In a presentation to Windsor City Council on May 26, 2008, DRIC conceded that GreenLink had not even been evaluated as an alternative pursuant to the EA Act.

199. The following excerpt is taken from a transcript of DRIC's presentation to Windsor City Council on May 26, 2008. The exchange set out below involves His Worship Mayor Eddie Francis asking Doug Chambers of SENES Consulting, DRIC's air quality consultant, if GreenLink had been compared against the Parkway or the other Practical Alternatives in relation to air quality:

> "Mayor: …When it said "all alternatives" to provide net benefit to local air quality I presume then based on the earlier Council questions, as a point of clarification, **GreenLink was not considered when it came to air quality?**
>
> D. Chambers: Good evening. I can't remember the details of slide 14 but I think that referred to 5 major options….

> Mayor: **So you didn't measure GreenLink against your five options?**
>
> D. Chambers: **No, we did not."**

200. Similar questions were asked of DRIC in relation to each of the seven evaluation factors used to assess DRIC's six Practical Alternatives (the original five alternatives, plus the Parkway). In each case, DRIC answered that GreenLink had not been evaluated alongside the other six Practical Alternatives.

201. At one point, Mayor Francis asked Len Kozachuk, DRIC's then Deputy Project Director, whether GreenLink had actually been assessed as an access road alternative within the EA process at all. His answer was no.

> "Mayor: Mr. Kozachuk and to the [DRIC] Team, on page 11 of your presentation today there's a table. On page 11 of the Summary of Assessment, in that table, and directly to Councillor Gignac's question, deals with comparisons for air quality, community and neighbourhood land use, cultural resources, natural environment, regional mobility and cost and constructability. The Councillor's question, if I understand it correctly: **Was GreenLink measured in each of those assessment factors?**
>
> L. Kozachuk: **Not as a formal alternative as for the other six alternatives."**

202. Mr. Kozachuk's concession that GreenLink had not been evaluated was confirmed when DRIC began to release technical studies May 2008. None of the 17 technical studies released by DRIC in 2008 evaluated GreenLink as a Practical Alternative.

203. The draft EAR itself, recently released, does not treat GreenLink as a Practical Alternative or subject it to evaluation pursuant to the factors and criteria set out in the TOR.

204. When asked why it had failed to evaluate GreenLink as required by the TOR and the EA Act, DRIC provided two explanations.

- DRIC claimed that selected features of GreenLink had been incorporated into the Parkway; and
- DRIC's end-to-end tunnel, eliminated from further consideration in August 2007, was used as a proxy for the evaluation of GreenLink.

205. In relation to the first explanation, His Worship Mayor Francis asked DRIC why GreenLink was the only alternative of the seven examined not to be evaluated against the approved criteria and evaluation factors. DRIC responded that the Parkway had "adopted" many of GreenLink's features.

"Mayor: But Mr. Wake, with respect, that is not the question. I asked you, at the beginning of the process, you had 15 plazas, 15 bridges and other proponents, and you measured and evaluated on the same factors – replicable, traceable, open, justifiable – and you went through the process, shook things out and you arrived at a result, and you said yes. I said to you: 'That is the environmental assessment process?' You said yes.

So it is the same environmental assessment process, so why isn't the same type of treatment given to GreenLink? I don't care if you 'looked' at it, because quite frankly you're biased, just like we're biased, in our opinion in terms of what the best solution is, and that's why we have the environmental assessment process to remove bias. **So why was it that GreenLink was not subjected to the environmental assessment process with the seven criteria and seven factors measured up against GreenLink** to determine whatever that output is, whatever shakes out at the end?

D. Wake: Umm, well, as I was explaining, we've received GreenLink, we looked at it, we found a number of similarities between GreenLink and the Parkway…

Mayor: You do not want to answer the question.

D. Wake: …**we concluded that a complete analysis of GreenLink was probably, when it comes down to it, we really didn't need to do that because we understood the benefits**, the impact based on the work that we have done on the other factors or all factors for all five alternatives.

Mayor: Now we're getting somewhere. So the answer of the question based on your understanding of how things are, **you made a determination that it wasn't an appropriate subject to be brought forward for evaluation** against those factors?

D. Wake: **We looked at it. We found the commonalities. We found the Parkway adopted many of those features**. We had already looked into end-to-end tunnels…"

206. In the draft EAR, DRIC takes the position that it considered Windsor's input on whether the Parkway should be modified:

> "The study team carefully reviewed and assessed all of the information available about the GreenLink Windsor proposal, and considered the extent to which it would be appropriate to modify the August 2007 Parkway alternative."

207. But in the draft EAR DRIC agrees that "The GreenLinkWindsor proposal could be considered an "intermediate" alternative between the Parkway and the full 6 km tunnel that was previously assessed."

208. Neither the OEAA nor the TOR permit the "adoption" of features from an alternative to take the place of an assessment using the approved evaluation factors and criteria. In order to compare apples to apples, it is important that each alternative is compared against a consistent, traceable, set of criteria. This is a fundamental EA requirement which is explicitly binding on DRIC, but which it flaunted in the case of GreenLink.

209. In relation to the second explanation, Councillor Percy Hatfield asked Fausto Natarelli if DRIC planned to evaluate GreenLink pursuant to the same evaluation factors and criteria used to select the Parkway. Mr. Natarelli's answer was no.

210. Mr. Natarelli explained that it was not necessary to evaluate GreenLink (which proposed 65% tunnelling as compared to the Parkway's 31% of overpass coverage), because the impacts of a full tunnel had already been examined:

> "P. Hatfield: …**Do you plan to compare GreenLink, the City's plan, to the DRIC plan** between now and sometime in the future, if you haven't done so already?
>
> F. Natarelli: As I indicated earlier on, Councillor, **we've taken the best aspects of GreenLink**, they're found in the Parkway…" (Transcript of Windsor City Council Meeting, May 26, 2008, emphasis added)
>
> "Mayor: Correct me if I'm wrong, though, but you were very clear in your presentation today, or your term was, that let's pick a tunnel, the Labelle Tunnel which is 1,220 metres, but you did not evaluate it to see what the impact on air quality was? So what's your point? Can you rule out mechanical ventilation where a tunnel of 1,200 metres based on cost vs. benefit when **you did not even compare it? Where's your analysis?**
>
> M. Thomson: **We did not compare it directly. For compassion, we used the results of the analysis that had come from the full tunnel and the end-to-end tunnel**…."

211. Mr. Natarelli is claiming it was not necessary to evaluate GreenLink because DRIC had evaluated and discarded the full tunnel. In essence, DRIC took the view that if the full tunnel was not superior to the Parkway, then GreenLink could not be superior either. This view is repeated in the draft EAR at pg. 3-21 and 3-22.

212. In fact tunnelling was the only DRIC alternative that protects health of residents from vehicle emissions. Windsor has serious concerns about the extent to which DRIC failed to reveal the serious air quality impacts that the Parkway will cause compared to an access road with tunnelled sections, thereby misrepresenting the true benefits associated with tunnelling and the health impacts of the Parkway. These concerns are set out in detail elsewhere in this submission under the topic of DRIC's air quality analysis, and will not be repeated here.

213. Notwithstanding these concerns, the more fundamental point is that DRIC cannot point to authorization in the TOR or the OEAA to permit evaluation "by proxy". Evaluation "by proxy" is not a procedure contemplated or recognized by MOE guidelines or legal precedent. Certainly DRIC has never provided Windsor with any authority that would permit GreenLink to be dismissed on the basis of evaluation "by proxy".

214. Beyond the two official explanations offered by DRIC, a third is also evident in the answers provided to Council on May 26, 2008. In particular, DRIC refused to consider GreenLink because MTO would not consider tunnels >240m in length, purportedly due to the increased costs that attend such tunnels.

> "L. Kozachuk: …One of the major differences between the Parkway and the GreenLink is that of the length of the tunnels and that of the need for mechanical ventilation. As has been pointed out earlier, the **DRIC team does not consider any tunnels longer than 240 metres**… As far as the **Ministry of Transportation is concerned, they're not interested in looking at tunnels with mechanical ventilation** at the moment because of the increased construction, operation and maintenance costs that those facilities [sic] inhibit on the roadway in perpetuity…"

215. On a substantive level, it is simply not true that longer tunnels cost more to operate than short tunnels. In fact, the opposite is true. The operating costs of the GreenLink tunnels have been demonstrated to be lower than the Parkway tunnels over the life of both facilities. Short tunnels require a great deal of illumination for safety reasons, precisely because they are so short that drivers' eyes do not adjust in time, and artificial daylight conditions must be maintained underneath the short overpasses. Further, the DRIC overpasses will have a substantially shorter life span than long tunnels (50 to 75 years rather than 125 to 150 years for a real tunnel) and will therefore require costly replacement at relatively frequent intervals. Further, it is not clear that DRIC recognized or costed bridge deck replacement would be needed after 25 to 30 years, which would require full removal of the landscaping over the DRIC bridges.

216. Even if cost were a factor, DRIC's own evaluation criteria place cost as just one of the 39-45 evaluation criteria identified in the TOR, and in DRIC's documents, one of seven evaluation criteria. On a weighted basis, cost cannot account for more than 13 % of the decision.

217. On a process basis, DRIC's arbitrary exclusion of tunnels greater than 240 m length is simply not an approved evaluation criterion or evaluation factor. It stands outside the factors that DRIC was permitted to rely upon when evaluating or deciding to discard alternatives. In legal terms, it was *ultra vires* DRIC to rely on this MTO demand when rejecting GreenLink.

218. It is also completely nonsensical to say that tunnels >240m would not be considered. DRIC *did* examine a tunnel >240 metres. Alternative 3, the full tunnel, was an end-to-end tunnel, stretching 6 km or 6,000 metres. In comparison, GreenLink's tunnels ranged from 120 m to 1,220 m.

219. Finally, it should be noted that DRIC does discuss GreenLink for a few pages in the draft EAR (pg. 3-21 to 3-22), in the section on consultation. What is clear from this discussion is that DRIC decided to discard GreenLink based on a sort of "back of the envelope" review, without actually undertaking the analysis mandated by the TOR.

220. For Windsor, a municipality whose residents and neighbourhood will be affected by the access road design for many generations to come, DRIC's refusal to put GreenLink "through the mill" and only undertake the cursory critique they refer to so loosely in the draft EAR, undertaken entirely in private and without consulting with Windsor or consulting with the public, results in DRIC again engaging in an unfair process, contrary to the OEEA. DRIC's attacks on GreenLink in April and May, 2008 and its cursory discussion on two pages of the draft EAR, clearly fail to not only result in the assessment required by the OEAA and TOR but also render DRIC's decision making wholly NOT transparent, replicable, and consistent, and therefore a further violation of the TOR.

221. For example, it is not up to DRIC to decide, in a back room, that the cost of GreenLink is not worth the expenditure – without having conducted an evaluation as required by the OEAA. That is what an EA must do: what are the costs, what are the benefits, where are the trade-offs, how do the alternatives compare? If DRIC could eliminate alternatives without evaluating those alternatives, what have the last two years of public EA process served to accomplish? Why not take the same position on any of the other practical alternatives?

222. DRIC's failure to evaluate GreenLink as an alternative against EA criteria means that not only are stakeholders not assured that the best solution has been selected, it means that the public's overwhelming preference for GreenLink can be ignored by DRIC.

223. Nowhere in the draft EAR does DRIC make clear that 90-94% of the participants in the Windsor Open Houses preferred GreenLink. Nowhere does DRIC present its own statistics on this issue.

224. Nowhere does DRIC indicate that the Mayor of Windsor presented DRIC with postcards completed by 16,500 residents indicating a clear preference for GreenLink. The strength of this public preference has been completely ignored by DRIC during the EA process, as it has steadfastly refused to treat GreenLink as an alternative. As Councillor Hatfield noted on May 26, 2008, DRIC and DRIC left the Council meeting without even taking the cards along.

> "Thank you, your Worship…did you know we are all being presented with 16,500 names tonight that the members of the DRIC team left the room, left the post cards behind and I hope that's not indicative of what they think of the opinion of the people of Windsor who have clearly indicated a preference for GreenLink, where they've left the room and left 16,500 post cards behind…"

Further DRIC Illegalities

225. For all of the above reasons the DRIC's decision announced May 1, 2008 choosing the "Parkway" alternative as the preferred access road, and the methods used to reach that decision by DRIC/MTO, are a legal nullity, in that:

(a) DRIC refused to assess GreenLink as "an alternative method of carrying out the undertaking" in comparison to the Parkway, as required by section 6.1(2)(b)(ii) of the EA Act, particularly where DRIC invited the public to submit recommendations for improving the access road design and knowing that Windsor had invested considerable resources in developing that design;

(b) DRIC failed to give fair consideration to how GreenLink could effect a "betterment" in preventing and mitigating environmental impacts, thereby vitiating the prescribed "purpose" of the EA Act as set out in s. 2, i.e., "the betterment of the people of whole of any part of Ontario by providing for the protection, conservation and wise management in Ontario of the environment;"

(c) DRIC failed to abide by the requirements of s. 6.1(1) of the OEAA requiring the EAR to be prepared in accordance with the Terms of Reference approved by the Environment Minister for this project under that Act;

(d) DRIC chose a preferred alternative (the Parkway) without having evaluated the alternative designs for the access road (i.e., the "alternative methods of carrying out that undertaking") in a public, objective, fair, replicable, traceable and participatory manner as required by the TOR, including its failure to carry out rankings and weightings of the alternatives in terms of TOR criteria, or if such rankings and weightings were carried out, its failure to publish and allow for public comment on such rankings and weightings before DRIC/MTO announced the preferred alternative access road on May 1, 2008;

(e) DRIC failed to consult the City of Windsor in making key decisions with regard to this undertaking, contrary to s. 5.1 of the EA Act which requires that the proponent Minister must consult with "such persons as may be interested" and also failed to consult the City in violation of consultation requirements of the TOR and the Ministry of Environment;

(f) DRIC violated the approved TOR, violated the principles of procedural fairness, and acted without jurisdiction by:

(i) choosing the Parkway as the preferred alternative on or before May 1, 2008 without having conducted an EA pursuant to the OEAA (i.e., without having applied the approved evaluation and selection criteria set out in the TOR to all alternatives, including GreenLink, and considered the results);

(ii) using unapproved, undocumented and extra-statutory criteria, known only to the DRIC study team, in determining that GreenLink was not better in achieving mitigation of access road impacts than the Parkway and should not be carried forward as an alternative within the environmental assessment ("EA") process;

(iii) selecting the Parkway as the preferred alternative notwithstanding the fact that GreenLink better satisfies the DRIC TOR and selection criteria;

(iv) engaging in selective consultation with stakeholders supportive of DRIC's preferred alternative, while refusing to meet with the City of Windsor;

(v) receiving detailed technical input from the City of Windsor but refusing to consult thereon except after the decision as to the Parkway was made;

(vi) responding to the City of Windsor's input with a "Why Not GreenLink" media campaign, calculated to undermine public support, rather than consulting in good faith as required by the TOR and EA Act;

(vii) ignoring overwhelming public support of GreenLink in the selection of the Parkway as the preferred alternative;

(viii) ignoring, failing to summarize, or summarizing incorrectly the results of DRIC's own evaluation factors and criteria that did not support the Parkway, or which generated a preferred alternative other than the Parkway from among DRIC's five practical alternatives;

(ix) ignoring, failing to summarize, or summarizing incorrectly the results of public and community-based evaluations that did not support the Parkway, or which generated a preferred alternative other than the Parkway from among DRIC's five Practical Alternatives.

226. The following power point slides were delivered by Windsor to DRIC on May 26, 2008 in order to again highlight how DRIC ignored it's own EA criteria and acted contrary to the rules of fairness. Even as of December 12, 2008, DRIC has continued to ignore these fundamental EA process illegalities.

DRIC Ignored Its Own Criteria by Failing to Evaluate GreenLink

DRIC Failure to Comply with its EA obligations:

EA Requirement	DRIC Compliance?	DRIC Failure to Comply
"When preparing... an environmental assessment, the proponent shall consult with such persons as may be interested": s. 5.1 *Ontario Environmental Assessment Act*	x	**DRIC failed to comply:** Prior to the May 1/08 decision DRIC refused to meet with City Council to discuss GreenLink and to discuss its views of the Parkway compared to GreenLink
DRIC's consultation plan "will allow comments and views of the public to assist in influencing the study and recommendations thereof" *DRIC EA Terms of Reference, approved by Minister of Environment, pg. 45*	x	**DRIC failed to comply:** Prior to making its decision of May 1, 2008, DRIC refused to provide the City with and refused to consult the City regarding the relevance and accuracy of facts and analysis it used in reaching its decision that the Parkway is the preferred alternative; and DRIC also refused to meet with the City to allow the City to assist in influencing DRIC's decision

DRIC Failure to Comply with its EA obligations:

EA Requirement	DRIC Compliance?	DRIC Failure to Comply
"At the request of any Council, the Partnership will attend additional Council meetings to discuss project related issues" *DRIC EA Terms of Reference, approved by Minister of Environment, pg. 51*	x	**DRIC failed to comply:** City Council formally requested February 1, 2008 to meet with the DRIC team regarding the access road component; that request was repeated in letters dated March 31, April 17 and April 28, 2008. DRIC refused to arrange a meeting until after it decided and announced it has chosen the Parkway as its preferred alternative.

DRIC Failure to Comply with its EA obligations:

EA Requirement	DRIC Compliance?	DRIC Failure to Comply
"Consultation with interested persons is a cornerstone of environmental assessment and is a legal requirement of the Ontario Environmental Assessment Act. It is fundamental for the proponent to engage interested persons in the environmental assessment process early and often. Consultation should be meaningful and involve the two-way sharing of information". *MOE Code of Practice, "Preparing and Reviewing Environmental Assessments in Ontario", August 2007*	X	**DRIC failed to comply:** On May 1, 2008 DRIC "reached an important milestone... with the announcement of the Technically and Environmentally Preferred Alternative for the Canadian access road." However, DRIC reached this decision without (i) providing the City of Windsor Council any opportunity to meet with DRIC to discuss DRIC's proposed evaluation data and analysis indicating why the Parkway should be preferred; (ii) without providing the City access to DRIC's internally produced evaluation of GreenLink or the Parkway.
"One element of responsible decision-making is ensuring that those with a potential interest in the proposal... are provided with opportunities to contribute to decision-making and to influence decisions where possible" *MOE Code of Practice, "Preparing and Reviewing Environmental Assessments in Ontario", August 2007*		

DRIC Failure to Comply with its EA obligations:

EA Requirement	DRIC Compliance?	DRIC Failure to Comply
Ontario Environmental Assessment Board Criteria for Evaluating Consultation: a) did the proponent provide for interested persons to participate in a reasonable and meaningful way? b) Was the input received through the consultation taken into account by overall study process?	X X	**DRIC failed to comply:** - DRIC refused to meet with City Council to discuss GreenLink, a professionally developed and supported alternative; - DRIC acted unreasonably by making belated and spurious criticisms of GreenLink without attempting to discuss these with the City; - DRIC clearly refused to take the input received from the City about how GreenLink better meets DRIC criteria into account announcing the Parkway as its preference. - DRIC has neglected to compare GreenLink and the Parkway

Why DRIC's Process was contrary to its Environmental Assessment Terms of Reference (ToR)

Specifically DRIC was required, before it suddenly announced its decision that the Parkway was the preferred alternative for the access road, to have completed a sound evaluation process based on five key principles:

1) Comprehensive
2) Understandable
3) Replicable
4) Traceable; and
5) Participatory[1]

There were no materials published prior to this decision which make the DRIC decision "understandable, replicable or traceable". DRIC failed to assess GreenLink as an alternative route design and clearly DRIC's decision avoided participation let alone consultation with the City Council in rejecting GreenLink.

[1] DRIC EA Terms of Reference, pg 35

May 1st Parkway Decision was Contrary to rules of fairness

Excerpts from relevant Canadian Judicial rulings on consultation requirements:

- "What must not be compromised in any case is the necessity that the notice, consultation and input elements, however structured, not be perfunctory and formalistic. They must be meaningful and realistic, designed to ensure that there is a real opportunity for persons affected to take reasonable steps to try to influence the decision... sufficient of such information and material would generally have to be made available, at least in summary form, so that the persons affected will have a context in which to make their input, so that their representations can be directed to the real issues under active consideration".

May 1st Parkway Decision was Contrary to rules of fairness

- "The right to be heard and to play a meaningful part in the decision-making process is illusory unless it includes the right to explore and develop reasonable alternatives, the right to reasonable disclosure of information and documentation necessary to fully develop and present the position that the affected party wishes to be heard, and the right to be granted sufficient time to accomplish the foregoing."

May 1st Parkway Decision was Contrary to rules of fairness

- "A mere pro forma opportunity (for those interested) to present their views will not suffice. Instead there must be "meaningful participation in the actual decision-making.
- "[T]he right to be heard includes the right to the reasonable disclosure of information and documentation that will enable the affected party to fully develop and present the viewpoint that he or she wishes to be heard."

May 1st Parkway Decision was Contrary to rules of fairness

- "A mere pro forma opportunity (for those interested) to present their views will not suffice. Instead there must be "meaningful participation in the actual decision-making.
- "[T]he right to be heard includes the right to the reasonable disclosure of information and documentation that will enable the affected party to fully develop and present the viewpoint that he or she wishes to be heard."

Montréal | Ottawa | Kanata | Toronto | Hamilton | Waterloo Region | Calgary | Vancouver | Moscow |

DRIC has acted unfairly towards the City

- When asked on May 1 why DRIC refused to meet with the City prior to its decision, Dave Wake indicated DRIC was too busy to do so, stating "We have been working you know quite feverishly to assemble the information... "
- It was not revealed that DRIC had in fact met and briefed selected County officials and groups prior to the announcement.

May 1st Parkway Decision was Contrary to rules of fairness

- "A mere pro forma opportunity (for those interested) to present their views will not suffice. Instead there must be "meaningful participation in the actual decision-making.
- "[T]he right to be heard includes the right to the reasonable disclosure of information and documentation that will enable the affected party to fully develop and present the viewpoint that he or she wishes to be heard."

DRIC Inconsistency re Process

DRIC rushed to complete its analysis of the Parkway access road and announced it before the bridge or plazas - without taking the time to consult with City Council or analyzing GreenLink and discussing that with the City before rejecting it.

DRIC in effect separated the assessment of the access road from these other components.

But previously, DRIC said that was unacceptable.

- March /06: City asks DRIC to consider a "municipal-provincial" environmental assessment to identify further corridors and determine the most appropriate connecting route. The City said that there was a need for a "full and proper EA of the connecting route issue (given) its significance for the City, LaSalle and Essex County."
- May 16/06: DRIC (Dave Wake) letter to City said: "In the Terms of Reference, and in the work carried out since January, 2005, we have emphasized the importance of an end to end solution. **Therefore, we are not prepared to extract the access road portion from the overall environmental assessment. We intend to continue with the full, formal environmental assessment study for a solution extending from Highway 401 in Canada to the interstate system in the US."**

Process Issues

DRIC's process unfairness and failures with respect to public consultation and compliance with DRIC Terms of Reference and the EAA include:

- **DRIC acting secretly:**
  Despite DRIC's commitment to "an open and transparent" decision making process:
  - DRIC secretly carried out an evaluation on which DRIC based its decision preferring the Parkway, but kept it from the City, although City Council had repeatedly asked to meet before the decision was made.

May 1st Parkway Decision was Contrary to rules of fairness

- "A mere pro forma opportunity (for those interested) to present their views will not suffice. Instead there must be "meaningful participation in the actual decision-making.
- "[T]he right to be heard includes the right to the reasonable disclosure of information and documentation that will enable the affected party to fully develop and present the viewpoint that he or she wishes to be heard."

Process Issues

- **DRIC avoiding legally required public consultation duties:**
  - DRIC failed to consult in advance with Windsor regarding the data and analysis comparing how the Parkway and GreenLink meet the Terms of Reference;
  - DRIC failed to provide to the City DRIC's preliminary evaluation for review and response before determining the Parkway is preferred and publishing unwarranted criticism on GreenLink;

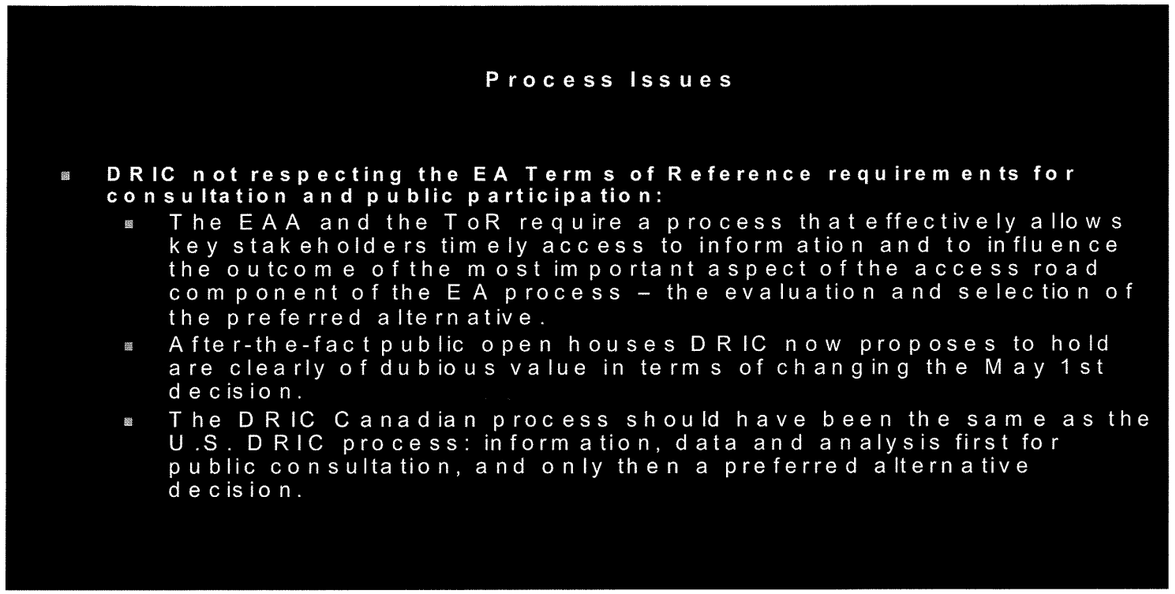
DRIC U.S. Process Consults First and Then Decides
Draft Environmental Impact Statement (U.S. Portion) February 2008
comment period ends May 29, 2008 (cont'd.)

PREFACE

Federal, state, and local agencies, and the public, will review and comment on this DEIS. A public hearing will be held. Comments received from the public and agencies will be summarized and addressed in the Final Environmental Impact Statement (FEIS) in which a Preferred Alternative will be identified. Any necessary changes resulting from the comments will be made in selecting the Preferred Alternative. Once complete, the FEIS must be first approved by the Federal Highway Administration (FHWA) and, then, it will be distributed for public and agency review. If FHWA agrees with the document's findings, after its circulation, it will issue a Record of Decision (ROD). It will allow the project to move forward into the design phase.

Process Issues

- **DRIC unfairly using the Terms of Reference evaluation criteria: "consistency with land use"**
  - In evaluating access road alternatives to a new crossing using the factor of "consistency with land use" DRIC in 2005 ruled out possible alternative routes through LaSalle based largely on the fact that such routes were
    - "not consistent with Town of LaSalle's existing and planned urban area uses; impacts to Town Centre;
    - impacts to Oldcastle settlement area and TransCanada Trail;
    - impacts boundary of LaSalle future urban area and residential uses near Victory Street"
  - but DRIC's Parkway decision fails to recognize how the Parkway will, as designed, be inconsistent with thousands of existing homes in close proximity to the Parkway, areas that are existing and planned residential areas in Windsor's Official Plan;



Conclusions

227. If the fundamental legal errors in the DRIC EA process previously identified by Windsor, and elaborated in this submission, once again, are not appropriately rectified MTO has no legal authority to submit this EAR in respect of the access road to the Environment Minister. DRIC's access road decision and its EAR in respect of the access road decision were arrived at in fundamental violation of the OEAA and TOR as well by an unfair process. Any such EAR cannot in law constitute an "environmental assessment". Rather, it is a legal nullity. As such, the Environment Minister has no jurisdiction to receive, consider, or review it, and certainly cannot process it for approval.

228. As it has in several previous submissions to DRIC, Windsor once again invites DRIC to take steps to cure the fundamental prejudice DRIC has created to its own EA process. DRIC could do this by:

(a) incorporating GreenLink as a formal alternative within the access road component of the DRIC EA process;

(b) with the participation of key stakeholders such as Windsor, fairly evaluating GreenLink along with the other six alternatives previously identified, using only approved evaluation and selection criteria;

(c) publishing the results of the revised technical evaluation(s);

(d) consulting all stakeholders in relation to the evaluation;

(e) giving full and fair consideration to the result of consultation and, in particular, public input supportive of GreenLink;

(f) with the participation of key stakeholders such as Windsor, selecting a Preferred Alternative based on the outcome of the evaluation in (b) and the consultation in (d) and (c);

(g) preparing an EAR setting out the results of the evaluation and consultation, and the rationale for the selection of the Preferred Alternative, in accordance with the TOR.

Paciorka Leaseholds Limited

Summary – MTO – DRIC Meeting
October 30, 2008
Location: 949 McDougall Ave., Windsor, Ontario
Time: 2:00 pm to 3:15 pm

Attendees
MTO – Mike Harrison
URS – Chris Schueler
Paciorka Leaseholds Limited – Bruce Paciorka
HGS Consultants – Rick Spencer

The DRIC scheme was discussed in terms of its impact, potential remedies and timelines such as land freeze, environmental assessment (E.A.), environmental assessment review period, sequence of highway construction, support roads, infrastructure reconfiguration, etc.) that will affect two of Paciorka Leasehold Limited's planned developments, particularly Area I (Lansing, Loretta at Huron Church Road to Ninth Street) and Area II (Ensign, Valebrook, Lamont, Bethlehem at Malden Road to Third Street).

Area I
Two access roads are required by the City from three optional points of entry which are 1) Todd Lane at either Ninth or Tenth Street, 2) Pulford and Pittsburg Street at Huron Church Road, and 3) Emilia Street at Huron Estates. The MTO is currently exploring the Pittsburg, Pulford Street and Todd Lane at Tenth Street combination. Paciorka Leaseholds Limited's preference is the Emilia and Ninth Street at Todd Lane combination because this could be constructed prior to the expressway rather than in tandem with the DRIC construction project. This would provide an alternative traffic route for approximately 275 residences (and perhaps 500 to 600 vehicles) that exist in Huron Estates and on Lambton and Reddock Streets unencumbered by the lengthy DRIC expressway project. This may also reduce damages due to delay of Paciorka Leaseholds Limited development plans that would otherwise be caused by the DRIC project. It should be noted that Ninth Street is viewed as a collector road by Paciorka Leaseholds Limited. The DRIC's current plan to route Ninth Street from Pittsburg southward to Reddock, then east on Reddock to Tenth, then southward to Todd Lane, would impose collector road status and heavier traffic volume that Reddock Street is not designed to service, nor that Reddock Street residents will appreciate. Paciorka Leaseholds Limited's plan to build Lansing Street between Ninth and Tenth Streets will provide a road loop and water main loop with Reddock Street, therefore, a continuance of Ninth Street from Reddock Street to Todd Lane is recommended rather that using Tenth Street.

The sanitary line from Northway Street westward on Pulford Street to the westside of Huron Church Road at Pittsburg Street will be displaced due to the DRIC project. Three alternative solutions are under consideration by the MTO. A secondary pumping station for a sanitary sewer will likely be required as the direct result of the expressway. A resolution to this issue is essential before our consultant can proceed with his functional servicing study.

The MTO suggests that the waterline is an insignificant issue for them. Timing and the connection point must be determined by the MTO before Paciorka Leaseholds Limited can proceed with its functional servicing study.

Paciorka Leaseholds Limited anxiously awaits the MTO's determination of the location and timing of

The roadway access points.
The sanitary sewer connection.
The water main.

in order to proceed with the required Functional Servicing Study and Traffic Calming Study which are preliminary to our rezoning application.

Paciorka Leaseholds Limited is hopeful that a window of opportunity will materialize to develop their land in this area between the conclusion of the Environmental Assessment Review period and before, or during, the construction of the expressway.

Area II

Paciorka Leaseholds Limited expressed a concern that the DRIC might exhaust the capacity of the current storm water system that would have supported development of their land. The MTO, however, assured Paciorka Leaseholds Limited that this is not the case. The development of lands owned by Paciorka Leaseholds Limited in this area has been frozen pending the determination of, the preferred route and plaza location and subsequently, the outcome of the Environmental Assessment and Assessment Review period which is expected to be completed in August of 2009. The opportunity to develop this area in the near term is very much dependent upon mutual cooperation between the City of Windsor and the MTO.

Paciorka Leaseholds Limited has four commercial tenants in a plaza on Malden Road about one block south of Springgarden Road. These tenants have managed businesses in these units variously for between twelve and twenty-two years. They are very concerned about the MTO construction activities near this Malden Road location that will discourage traffic flows by detour, traffic movement delays, noise, dust and exposure to heavy equipment. A seven week construction project occurred on Malden Road during the summer of 1997 to install sanitary sewers which severely affected their businesses.

In summary, a moratorium on development has been imposed on the two Paciorka Leaseholds Limited planned developments Area 1 and Area 2 previously mentioned since February 24, 2006 / March 14, 2006 (reference MTO / Lee Anne Doyle / Rick Spencer / cc). They are entirely within the area of continued analysis and subject to the MTO's environmental assessment and review period due to be completed in August of 2009.

Paciorka Leaseholds Limited awaits determination of remedial infrastructure solutions (sanitary access points, water line location, access roads, etc.).

An opportunity for some development on Lansing Street at Ninth Street and Malden Road may exist between the conclusion of the environmental assessment in August of 2009 and the commencement of construction a year later, depending on the MTO's timelines and determinations.

Paciorka Leaseholds Limited, October 30, 2008
(revised November 28, 2008)

ENV1283MC-2008-4423

THE DETROIT INTERNATIONAL CROSSING

PROJECT

Regarding : Comments for the Ministry of Environment & the Environmental Assessment process.

To believe that the DRIC bureaucrats have come up with the preferred "solution" also known as, The Windsor-Essex Parkway Plan, is a lie. The Parkway Project, is an enviromental nightmare, just waiting-to-happen. The DRIC bureaucrats ignored the public's wishes time-and-again, in safety features, in practical design, and in the economic reality which governs this city.

The staggering incompetence of the Ministry of the Environment is simply irresponsible. The lack of intelligence in relation to scientific data, showed contempt for public participation, and only fostered bureaucratic indifference.

The blatant manipulation of press releases, scientific reports, and public displays was down-right criminal, throughout the process. Four documentaries on the border crisis, highlighted the public's distrust of government officials. One of these titles was called, "Toxic Trespass" by the National Film Board of Canada. Do you believe, through official intimidation, that the Ontario Government can justify anything? Citizens are outraged, that the people who were supposed to be the lead agency in protecting us, failed us.

It is irrational to conclude, that the Ministry of Health would sanction HIGHER levels of pollution, and yet that is exactly what the Ministry of Transportation is recommending. Does the Ministry of Environment understand the cynicism here? or the irony?

The Ministry of Transportation set about cheapening the lives of citizens, and arrogantly (impacted) ignored quality - of - life issues, all for its own shameful interests.

Government Officials ambushed the DRIC process, despite the public's optimism for the projects original intent. Sadly, DRIC bureaucrats showed no creativity or vision, for generating the public's enthusiasm into action. Even the NAFTA AGREEMENT guaranteed that the public would be at the decision-making-table, yet the (CCG) community consultation group, was not permitted to have discussions with their own MPP's in a Public Forum. Added to the fact, that the CCG, demanded (for over 3 years) that governance meetings with Federal Ministers, be called, for Plaza Design Modifications & Security Issues. Infact, the official line at the first meeting to choose a Windsor Community

Consultation Group, was to weed-out participants!!! On the American Side, this policy was insured, when (LAC) The Local Advisory Council to DRIC, limited members, by selected appointments only. It didn't help, that competing private corporations, wanted to undermine the DRIC process itself, infavour of exclusive financial partnerships with the governmental agencies.

For Canadians, the process became a matter of survival for neighbourhoods, for local business, for environmental & health concerns, all in an attempt to live with, the consequences of a transportation corridor that cared nothing for, the empowerment of the public.

Now the Ministry of the Environment will sweep all the dangers, risks, and its economic racism, under the political carpet, inorder to pretend that the government's conservation policies are sound and viable. Even local MPP's are denying their responsibilies, inspite of their government's visible interference with the process.

Sub-standard funding. Sub-standard innovations. Sub-standard protections, and questionable engineering & scientific methods. Its no wonder Sandra Pupatello and Dwight Duncan, offended legions of citizens with their,"TAKE IT, OR YOU'LL GET NOTHING DECLARATION".

The murky dementions of computer modelling, is now openly criticized by the public. Noise & Pollution Modelling, along with vibration testing, inevitably lead to questions about unregulated standards, unproven safety levels, and the lack of mediation.

The Government's answer to removing trucks from Windsor's City Streets? Up-load the E.C.Row Expressway and the Huron Church/ Talbot Road Corridor.

The Government's answer to the inevitable "doubling" of pollution levels in ten years ? As one official put it,"I'm not here to clear up, the air pollution of Windsor". Seem the bureaucratic message was, quote "Windsor has the cleanest air in Ontario", unquote.

Answers like that show, government studies are a farce. Unable to come up with viable solutions, the government would rather pull the wool over the public's eyes, than admit they're victimizing thousands of citizens on a daily basis.

The real grassroots discussions were lead by thousands of Windsorites. And the strategy was clear, that Queen's Park must not

mortgage our future, or create environmental refugees. No politician has the discretion to impliment inferior policies, especially in the face of an environmental meltdown. The McGuinty Government has mandated a "bright future" for our region, with the support of a strong fiscal policy. Citizens here find (Finance Minister) Dwight Duncan's views misguided. Only someone, out of touch, could make an arguement infavor of a plan, designed with spiralling obsolescence.

The entire project should cost $5.5 Billion (dollars), between the two upper levels of government ---- inorder to accommodate the ($550 Billion) annual trade dynamic, that uses this transportation corridor.

Citizens are well aware, of how badly this project is needed, but they're not willing to be bullied into accepting a solution with a death warrent tied to it. Yet the Liberal Government refuses to recognize the loss of $33 Billion (dollars), in the next 15 years, due to Health Care Costs, from pollution emissions. The government won't recognize, the 3000 deaths, within the next 6 years (in Windsor) due to pollution related symtoms. To be blunt, the process has become a penny-pinching exercise, where citizens are considered expendable, by their own governments. Does the Ministry of Environment even understand the words, prevention & intervention? Does the Minister understand the power, of the Ontario Environmental Protection Act? If so, where is DRIC's cost benefits analysis, for emissions reduction? for health costs stablization? and risk management?

Fundamentally, DRIC abandoned "smart-growth" sustainability, and highjacked the policy confronting elements of poverty. There's a social movement that recognizes a link between environment, health, and poverty --- yet DRIC failed to respect the social justice aspect inbedded within its own program, for reviewing accumulated impacts.

OTHER ON-GOING EA's INCLUDE

A) The Banwell Road Project
B) The Manning Rd. Project
C) The Highway 3 Improvement Project
D) Ambassador Bridge

Of course, the issues of truck traffic and diesel emissions, go hand-in-hand. The Ministry of Transportation lied, when they said the current rate of trucks crossing the border, was inpart 12,000 a day.

The citizens of West-Windsor commissioned Wayne State University to determine what was the truth behind the numbers. Government computer modelling, again deliberately evaded the complexity for understanding the traffic-flow in my neighbourhood. Simply having traffic counting personnel on the corridor for 6 hours, is counter-productive. Our students were out on the streets for 2 weeks straight, for 24 hours a day. My neighbourhood experiences traffic 24 hours a day, which means we're exposed to pollution emissions 24 hours a day.

Inspite of the current economic down-turn, our statistics show 15,000 to 18,000 trucks a day. Consequently, in the coming years, using the DRIC's forecasts, by 2020, West Windsor & the new Border Crossing, will be welcoming POLLUTION EMISSIONS FROM 40,000 trucks a day.

The Ministry of Environment is well aware of the air quality situation, in our region. The so-called lack of funding, the lack of equipment, and the lack of scientific expertise, is suspect, inorder to conceal the true nature of what is happening in Windsor. Government Reports have come to my attention, that pollution levels in some parts of the city are 4 times higher, than anywhere else in Canada. By the time the DRIC project is complete, Windsor's emissions will spike to, 8 times the legal limits.
Which begs the question, why is the Ministry dodging the issues?

The Liberal Government's Parkway Plan, under the direction of URS Canada LTD. is contentious. It fragments the highway system, with a series of overpasses, that they claim creates a tunnel. In reality, the openings from this trench, are where emissions escape into neighbourhoods, into arenas, highschools, churches, and shopping plazas. (A 5 kilometer stretch) These portals of death, are the government's recommendations for an environmentally friendly future. The bureaucrats contend, that ventilation buildings are unnecessary, because they wouldn't change anything. The truth is, this simply becomes an exercise in semantics and government idiocy.

Citizens were specific, <u>not to ask</u> for ventilation buildings, ---- instead the public demanded 3 filtration buildings with engineered scrubber technology ---- the so-called SCRUBBER BUILDINGS. The Media never picked up on the fact, that the Ministry of Transportation maliciously pollutes unimpeded, and ventilation in itself, is not a means to capturing pollution.

The Ministry of Environment might be familiar with the City of Windsor's GreenLink Project, that asks for 75% tunnelling. DRIC Officials are only offering 26% tunnelling. Consequently neither government proposal, provides protection. Must it be pointed out, that citizens still end up with 100% of these deadly emissions, which makes BOTH government proposals, worthless. It is unbelieveable that each level of government, envisions a right to patronize and manipulate citizens. Why was there no concerted effort to support citizen's initiatives?

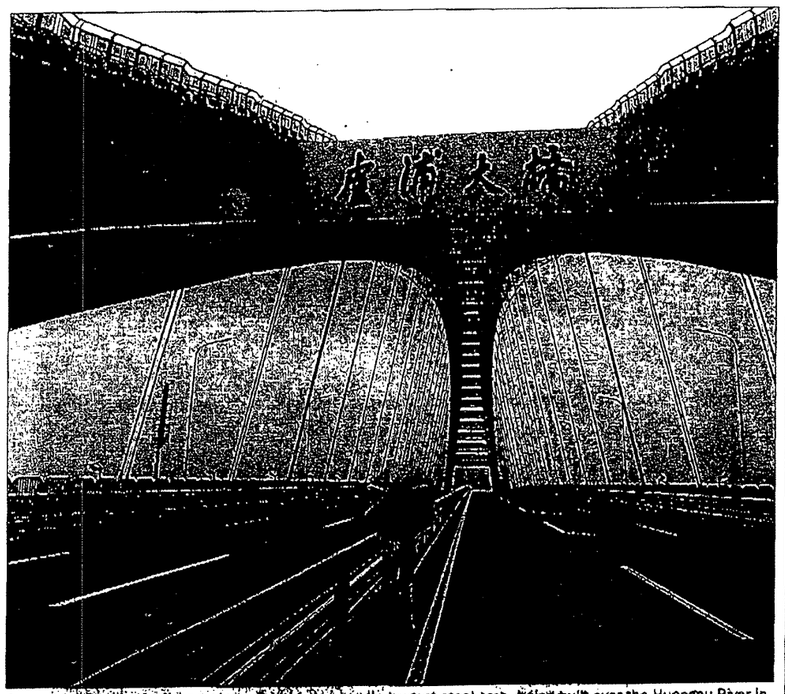
Citizens protecting CITIZEN'S RIGHTS was always at the fore-front of the CCG's agenda. <u>100% Tunnelling, with, Scrubber Buildings, is the only acceptable solution</u>. And the Ministry of Environment knows this, is a human rights issue. Cost be damned, because if you attempt to make it an issue, the political fall-out would be devastating, for any government which imposes short-cuts. Don't tell us the technology doesn't work, because engineering intellence will prove you wrong everytime. Your DRIC Officials and Environmental Bureaucrats; do not live in an information vacuum.

Citizens wanted partnerships between The University of Windsor's Centre for (technological) Innovation and St.Clair College's Engineering Divisions, which could impliment and develope integrated filter systems, known as the <u>next generation of electro-static parcipatators</u>. These strategy improvements to Environmental Engineering Systems, could create a whole new industry in the Southwestern Ontario Region.

The co-ordinated forums of DRIC by-passed all these opportunities, that the PUBLIC pinned their hopes on. Must I point out, it was the Ministry of Environment that impeded all these economic initiatives, and it is only the Ministry of Environment that can correct all these grave errors, before it, and the Cabinet, make a final decision.

I thank-you for your kind consideration of this matter. And I look forward to a positive and concerted resolution, for everyone concerned.
Yours Cordially

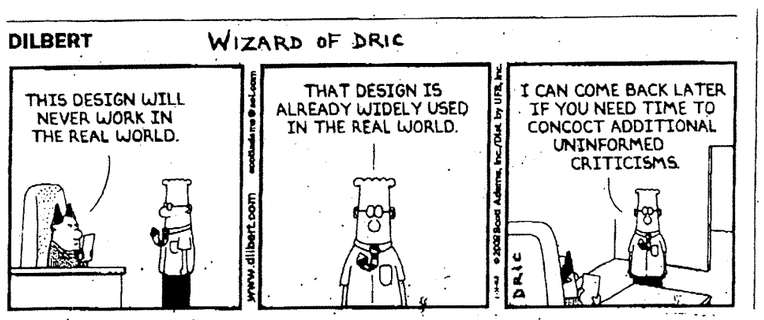
Mammoth connection



A man inspects the brand new Lupu Bridge, the world's longest steel arch, being built over the Huangpu River in Shanghai, China, Friday. The main section of the 3,900-metre-long (13,000-foot-long) record-breaking arch bridge, is 750 metres (2500 feet) in length and 28.7 metres (95.7 feet) in width with six lanes. The bridge will be opened to traffic today.

Associated Press photo

Build with the future in Mind.



"Johnston, Steve (JUS)"
<Steve.Johnston@ontario.ca>
05/12/2008 03:35 PM

To <Jacquie_Dalton@URSCorp.com>
cc
bcc
Subject EAComment5_RE: DRIC Study - Notes of November 12 CANAAG Meeting

Hi Jacquie:

Review of the DRIC Environmental Assessment Report has been conducted and the following remarks are presented for your consideration:

The most significant concern created by the recent proposal is the roundabout proposal to be implemented in the vicinity of Howard Avenue and Highway 401. Roundabouts may improve the overall safety of intersections by eliminating or altering conflict types as divulged within " Roundabouts: An Informational Guide". The OPP however remains concerned about possible merge and diverge conflicts, particularly within the multilane roundabouts as proposed in the study. This concern is exacerbated due to the Ontario motoring public's general unfamiliarity with traffic patterns of this type. We would be interesting in knowing what the proposed speed limit is for this area; for the roundabout as well as the area leading to it. Lastly, with respect to this point, has the projected average daily traffic been calculated for this area?

The communications infrastructure is also of great interest. We agree that the usage of CCTV cameras through the Parkway is of great importance. The report seems to indicate that monitoring of the CCTV cameras would be conducted at the West Region Traffic Operations Center. While it may be too early for consideration, the Essex County OPP would like the ability to also be able to monitor the East camera feeds locally. As the report states the connection from a communications hub to the London TOC will be via leased media. Would it be reasonable to assume then, that it would be a relatively easy feat for the Essex County OPP to be able to monitor this as well? Real-time intelligence about major incidents within this area would be instrumental in developing a prompt response.

In essence, this constitutes the crux of our observations derived from this report. We appreciate the opportunity to provide feedback and look forward to continued participation in this process.

Thank you

SW Johnston

Provincial Constable # 9754
Strategic Planning Officer
Essex Detachment
Ontario Provincial Police
PH: (519) 723-2491

[redacted]

phone: [redacted]
fax

email [redacted]

DRIC response.doc

Murray Thompson/Toronto/URSCorp
09/12/2008 10:38 AM

To [redacted]
cc Dave.Wake@mto.gov.on.ca, roger.a.ward@ontario.ca, jacquie_dalton@urscorp.com
bcc
Subject EAComment6_Re: Fw: Windsor Parkway tunnelser

[redacted]

This will acknowledge receipt of your email of Dec 8, 2008 with comments pertaining to tunnels. By copy of this email, I am forwarding your comments to the MTO. The DRIC study team will review and consider these as we proceed to finalize the report for formal submission to the Ministry of Environment.

Thank you for your continued interest and participation in the project

---

Murray D. Thompson, P.Eng.
Vice President
URS Canada Inc. - Consulting Engineers & Geoscientists
75 Commerce Valley Drive East, Markham, ON Canada L3T 7N9
Tel: 905.882.4401, ext. 252 Fax: 905.882.4399
E-mail: Murray_Thompson@urscorp.com www.urs.ca

Please consider the environment before printing this e-mail.

[redacted]

[redacted]
08/12/2008 11:21 PM

To Murray_Thompson@URSCorp.com
cc
Subject Re: Fw: Windsor Parkway tunnelser

Dear Mr. Thompson,

First, thank you for providing the list of features, lengths and separations along the Windsor Parkway as designed by URS. Based on it, I have constructed a list of suggestions for extensions to some of the tunnels. The extensions I suggest maintain maximum tunnel lengths of <240m, separations of 200m or more, and do not affect designs for entrance and exit ramps you have proposed.

The one thing your handouts at the November Open House did not include was where to send comments beyond those submitted at the Open House. I was informed that the comment period extends only to December 12, so I am sending my comments to you, and expecting that they will be forwarded to whomever should be receiving them.

Notes for DRIC on the potential for elongation of certain tunnels along the Windsor Parkway

After attending Open House #7 (November 2008) and carefully looking at the maps of the "final" Parkway proposal, I was struck by the long-held determination by DRIC to maintain tunnel lengths very similar to much earlier proposals, and to apparently refuse to compromise with the Greenlink proposal advanced by the City of Windsor. I was also struck by the potential to attempt such a compromise by extending a few of the tunnels without affecting the limitations that have been important to DRIC's design process: tunnels cannot be longer than 240m without requiring mechanical ventilation, and tunnels must be separated by at least 150m (and preferably 200m) to avoid pollutant entrainment. There are also constraints imposed by the design of entrance and exit ramps from the Parkway.

Nevertheless, there are places where compromises could be achieved. Having obtained data from URS in the form of a list of feature lengths and spacings from the beginning of the extension of Hwy 401 to the 'turn' near EC Row, what follows is a list of changes that would not affect design limitations, but could be achieved for only the added cost of walling and covering the added tunnel extensions:

1. The Cousineau Road tunnel could be extended 70m (to then be 240m long) toward the St.Clair College tunnel. That would reduce the separation between Cousineau Rd. and St.Clar College tunnels to 340m, still far longer than the minimum required.

2. The St.Clair College tunnel could be extended towards CousineauRd. by 100m, to a length of 220m, still short enough not to require mechanical ventilation, and leaving a spacing of 240m from the extended Cousineau Rd. tunnel. The separation would remain sufficient to avoid entrainment.

3. The Cabana Rd. tunnel could be extended from 120m to 170m in the direction of the Huron-Church Rd. tunnel while leaving a spacing of 200m between them.

4. The Pulford St. tunnel could be extended towards the drain by at least 50m (to a length of 170m), leaving sufficient space from the drain (at least 100m) and from the tunnel beyond.

5. The Spring Garden tunnel could be extended by 40m at either end to reach the maximum permissible length of 240m. without causing problems of spacing.

In total, the lengthening I am suggesting adds up to 310m of additional tunneling without affecting any of the constraints of length, separation, or ramps and other features in the design. The addition represents an approximately 16% increase in potential parkland associated with the Parkway, and in some places further insulates housing developments from the long-term impact of the roadway. The only explanation offered by URS and MOT officials why this should not be done was cast in terms of "cost/benefit". The costs would not be large, and the benefits in terms of aesthetics, parkland, and appearance of the project would be considerable.

Please seriously consider adjusting/compromising in your final project plans.

[redacted]

Phone: [redacted]
Fax: [redacted]
Email: [redacted]

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Ontario

File No SI ES WI EA

MEMORANDUM

21 November 2008

To: Catherine McLennon
Special Projects Officer
Environmental Assessment and Approvals Branch
2 St. Clair Ave. West
Toronto, ON M4V 1L5

From: Ian Kerr
Supervisor
Water Resources Unit

Re: Detroit River International Crossing Study
Draft Environmental Assessment Report
Individual Environmental Assessment W.O. 04-33-002
November 2008

The Water Resources Unit of the Southwestern Region of the Ministry of the Environment has reviewed the draft documents provided for the above referenced Individual Environmental Assessment. The comments from surface and ground water staff are attached to this letter as two separate memoranda.

If you have any questions, please contact me at 519-873-5041.

Yours truly,

Ian Kerr, P.Geo.
Supervisor, Water Resources
Southwestern Region

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November 21, 2008

To: Ian Kerr
Supervisor, Water Resources

From: Scott Abernethy
Surface Water Evaluator

Re: **Review of the Detroit River Crossing Environmental Assessment**

For surface water concerns, I have reviewed the following documents prepared by URS for the Canada-United States-Ontario-Michigan Border Transportation Partnership:

1. Environmental Assessment Report - Individual Environmental Assessment Detroit River International Crossing Study City of Windsor, County of Essex, Town of LaSalle, Town of Tecumseh (draft November 2008),
2. Practical Alternatives Evaluation Assessment Report - Stormwater Management Plan (revised March 2008), and
3. Practical Alternatives Evaluation - Constructability Report for Access Road Alternatives (draft May 2008)

The reports should explicitly identify the need for MOE approvals under the *Ontario Water Resources Act* for water quantity (water-taking permit) and water quality (sewage works approval). MTO projects are exempt from storm sewage works approvals under the *Public Transportation and Highway Improvement Act*, but MTO is not the proponent in this case. The reports discuss the potential need for construction de-watering and for stream diversion, activities which would trigger water-taking permit requirements for water flow daily rates greater than 50 cubic metres. Hydrogen sulphide and any other contaminants present in ground water may require an OWRA-approved treatment system before discharge to a watercourse.

Containment for spill control is the primary storm water quality concern for the truck staging area or plaza. A pond discharge shut-off valve, as mentioned in the reports, is a logical part of an overall strategy for spill control.

The proposal for nine stormwater ponds means that the drainage area supporting each pond is generally less than the preferred criterion (10 ha) and also less than the minimum criterion (5 hectares) based on MOE's Stormwater Manual (2003). Opportunities to reduce the number of ponds by combining drainage areas should be explored so drainage areas meet the criteria.

Page 12 of the stormwater plan mentions the enclosure of Wolfe Drain as a possibility. MOE views the burial of a watercourse as an adverse effect under the *Environmental Protection Act*.

Page 16 of the stormwater plan alludes to the implementation of unspecified controls to limit the recognized damaging environmental impacts of chloride from road salt. De-icing alternatives to road salt should be investigated within the scope of the EA.

The EA should commit to or propose an environmental monitoring program to show that the construction and operation of the project does not degrade water quality and it should propose contingency measures to rectify any degradation which is identified based on monitoring data.

The storm water management plan for the bridge crossing would be prepared as a separate study. If this study is part of the EA it should be reviewed by MOE so a complete assessment can be provided.

Regards,

Scott Abernethy

Phone (519) 873-4779
Fax (519) 873-5020
E-mail. scott.abernethy@ontario.ca

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Ontario

File No SI ES WI EA

MEMORANDUM

21 November 2008

To: Ian Kerr
Supervisor
Water Resources Unit

From: Jeff Markle
Hydrogeologist
Technical Support Section

Re: Detroit River International Crossing Study
Environmental Assessment Report
Individual Environmental Assessment W.O. 04-33-002
November 2008

I have reviewed the sections of the EA documentation for the proposed Detroit River Crossing that pertain to potential effects on the groundwater. Specifically, portions of the following documents were considered:

1. URS. *Environmental Assessment Report, Individual Environmental Assessment W.O 04-33-002*. November 2008.

2. *Detroit River International Crossing Environmental Assessment Study, Practical Alternatives Evaluation, Constructability Report for Access Road Alternatives, Draft*. May 2008.

3. *Detroit River International Crossing Environmental Assessment Study, Practical Alternatives Evaluation Working Paper, Waste and Waste Management, Draft*. May 2008.

4. *Detroit River International Crossing Environmental Assessment Study, Draft Structural Planning Report for Practical Alternatives*. May 2008.

5. Golder Associates. *Preliminary Foundation Investigation and Design Report. Evaluation of Alternative Bridge Sites*. February 2008.

6. Golder Associates. *Preliminary Foundation Investigation and Design Report. Detroit River International Crossing Bridge Approach Corridor, Draft Report*. October 2007.

This EA has been completed in response to the need for a new or expanded crossing of the Detroit River identified as part of a long-term strategy to address the safe and efficient movement of people and goods between southwestern Ontario and southeastern Michigan. This

EA documents the process followed to select the form and location of the river crossing known as the Technically and Environmentally Preferred Alternative (TEPA). The TEPA comprises the Windsor-Essex Parkway (a six-lane freeway with 11 tunnels, 14 over- and under-passes, and service roads) which connect highway 401 to a new inspection plaza, Plaza B1 (an inspection area with parking and toll collection), and Crossing X-10B (a new six-lane bridge across the Detroit River between Windsor and Detroit). Many factors were considered in the evaluation process, but I have considered only those which related to potential effects on the groundwater in this review. My comments are provided below.

The area around the proposed project is characterized by approximate 20 to 35 m of overburden overlying bedrock. The overburden comprises 1 to 4 m of fill associated with industrial and urban development, mainly underlain by thick deposits of silty clay. The water table within the overburden is generally between 1 and 3 m below the ground surface (bgs) and groundwater within the bedrock is under artesian pressures in some areas. As a result of the high water table and artesian pressures, construction of elements of the approach corridor (tunnels and under passes) and inspection plaza may require dewatering. Where the dewatering will require pumping of more than 50,000 litres per day (Lpd) a Permit to Take water will be required. Evaluation of the potential impacts of the water taking should consider the guidance provided in the *Permit To Take Water (PTTW) Manual*, Ministry of the Environment, April 2005, and *Technical Guidance Document for Hydrogeological Studies in Support of Category 3 Applications for Permit to Take Water*, Ministry of the Environment, April 2008. In some cases (ie. tunnels), permanent dewatering may be required. The potential effects of such activities must be addressed.

The Waste and Waste Management report identifies several areas of known contamination, including closed landfills, on or near lands within the areas of the proposed approach corridor and inspection plaza. As well, former industrial lands within these areas are present and it is possible that contamination, associated with past land use, is present. Given that the proposed approach corridors and plazas are in or near former industrial areas and several known contaminated sites have been identified, any permit application must also consider the potential for the water taking to mobilize contaminates that are both on-site and adjacent to the proposed works. This potential for mobilizing contaminants is acknowledged on page 23 of the Waste and Waste Management Report. Where contaminated soils and material are encountered the procedures outlined in the May 2008 Waste and Waste Management document should be followed.

The groundwater in the area reportedly has high concentrations of hydrogen sulphide. Where the proposed discharge for a water taking is to a stream or wetland, the potential impacts of the hydrogen sulphide on the receiver should be addressed.

If you have any questions, please contact me.

Jeff Markle, P.Eng.
Hydrogeologist
Southwestern Region

cc. S. Abernethy

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Ontario

November 28, 2008

MEMORANDUM

To: Catherine McLennon
Special Project Officer
Environmental Assessment and Approvals Branch

From: Mike Parker
Supervisor, APEP
Southwestern Region

Re: Detroit River International Crossing Draft EA

The Air Unit of Southwestern Region, Technical Support Section has reviewed the draft individual environmental assessment for the Detroit River International Crossing Project and has the attached comments.

If you any questions regarding the attached comments, please contact me at 519-873-5043.

Yours truly,

Mike Parker
Supervisor: Air, Pesticides and Environmental Planning.
Southwestern Region

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Ontario

November 28, 2008

MEMORANDUM

To: Mike Parker
Supervisor, APEP
Southwestern Region

From: Gerald Diamond
Air Quality Analyst
Southwestern Region

Re: DRIC Draft EA

I have read the draft EA and have the following comments. I have largely restricted my review, and hence my remarks, to the areas dealing with air quality. However, I do have a few general remarks.

The format of the document makes it very difficult to handle. I would suggest a more "typical" size for future iterations.

I find the distinction between "air quality" and "the natural environment" to be a bit off-putting as the first is merely a component of the larger second. However, it does give the environment more weight than it would otherwise receive.

For an environmental assessment, I found the detail and information on the environment to be somewhat sparse.

Section 4.1

Their description of the ministry's air monitoring in Windsor is wrong. They believe monitoring stopped in certain places when it hasn't and seem unaware of other stations altogether. Nonetheless, it is unlikely that the additional information would have made a significant difference to their conclusions.

Section 6.1

The writers remarks that they believe that traffic will divide evenly between the new link and the Ambassador Bridge. However, given the opposition to truck traffic passing through the downtown, and past residential areas, this may not be the case.

A more cautious approach would be to expect that political pressure might cause more of the truck traffic to be diverted to the new span and leave the existing bridge for lighter vehicles.

Section 6.2

The scoring table places "Changes To Air Quality" as separate from "Protection Of The Natural Environment". I am not sure I agree with this distinction.

More significantly, I disagree with weighting air quality this low. Residents regularly complain about the air quality impacts of the truck traffic, especially when queued. The Ontario Medical Association continues to assert that poor air quality results in thousands of premature deaths in Ontario each year. This should not be downplayed in the interest of *improving regional mobility*.

It is not made clear how broad brush descriptions are converted to numeric scores for the different categories. In particular there is no description of how the different air quality impacts were determined or how (presumably modelled results) were averaged to give descriptions such as "no to low impact".

Section 7

They state that " ...in recent years the number of fully operational [air monitoring] stations has been reduced to two." This is incorrect.

The tables summarising the air monitoring are vague in places. While 1 and 24 hour maxima are self explanatory, it is not clear if the average and 90th percentile rows refer to hourly or daily values.

I disagree with the choice of the 90th percentile as representing background, especially for particulate. Choosing this level in any given year still means there are about 36 days or 876 hours where the ambient concentration is higher. In addition, these are not randomly distributed but rather occur preferentially during the summer.

Tables on pages 8-16-8.19

In section 6, a detailed rationale was set out for the weighting. These were equated to the various "level[s] of importance" (see page 6-19). However in these tables three different weighting sets are used. While they are ascribed to different sources, it is not clear how the other two were used, how the "community consultation" differs from the "public" or if they were given equal consideration with the MTO weighting.

There does not seem to be much information on how the unweighted scores were derived.

It would be easier to reconcile these tables if the rationale for the weightings were closer to the tables.

Looking strictly at the two environmental factors and using the relative weightings given, the scores suggest the following.

From the Study Team's evaluation either **Crossing C + Plaza C** is the preferred choice. This is also the preferred choice for both the "public weighting" and "community

consultation" weightings.

The scoring also seems a bit peculiar. Most of the scenarios describe the air quality changes as "slight increases" or "increases with 250 m". In spite of this there are no scores above 2. Given that "improve regional mobility" scores reach 7, this suggests that the impacts to air quality are much worse than the description suggests or that they are downplaying environmental concerns.

Section 10.1

The results are very qualitative. Several documents for the preferred alternative are described as pending. More detail will be necessary for the final version of this document.

Gerald Diamond

[redacted]
11/12/2008 10:26 AM

To <detroit.river@ontario.ca>
cc <info@partnershipborderstudy.com>, [redacted] <Mike.Harrison2@ontario.ca>, [redacted]
bcc
Subject Comments and Recommendations wrt Roadway Lighting and the DRIC Draft EA Report

Dear Mr. Ward:

Further to my email to the DRIC Study team, dated June 29, 2008 (see message history below), I am writing to reiterate my request for the use of full cut-off and shielded road lighting fixtures along the Windsor-Essex Parkway, as well as along the new customs plaza and the international bridge crossing.

I am an amateur astronomer [redacted] and have an astronomical observatory in my backyard. I conduct educational and observational astronomy talks to small public groups [redacted] in my back yard, providing these groups an opportunity to view the night sky using the telescopes in my observatory. To prevent further detriment of my view of the nighttime sky from my backyard observatory, I am requesting that full cut-off, shielded roadway lighting fixtures mounted on traditional light standards, not high-mast light standards, be used along the Parkway. Please refer to my email of June 29th, 2008 for additional comments and details.

Please do not hesitate to contact me (daytime: [redacted] or [redacted] evening: [redacted], should you require additional information on these important issues or have any questions. If it would be helpful, please let me know if you would like a personal tour of my observatory. It can be arranged. I look forward to hearing from you with regard to the concerns expressed herein. Thank you.

[redacted]
Tel: [redacted]
Email: [redacted]

From: [redacted] [mailto: [redacted]
Sent: Sunday, June 29, 2008 1:26 PM
To: 'info@partnershipborderstudy.com'; 'detroit.river@mto.gov.on.ca'
Cc: [redacted]
Subject: Comments and Recommendations wrt Roadway Lighting and Road Noise, as a Consequence of the June 18th & 19th DRIC Public Information Sessions
Importance: High

DRIC Study Team:

As a resident of the Windsor and Essex County area, a member of the Royal Astronomical Society of Canada (RASC) and a professional environmental engineer, I request the following be included with the modifications and improvements to be implemented along the Windsor-Essex Parkway:

1. Engineered noise abatement measures, based on "Best Available Technology", to reduce the transmission of road noise into the housing developments adjacent to the highway, in accordance with applicable provincial regulations and guidelines;

2. The use of full cut-off and shielded road lighting fixtures, to:

   a) Prevent light from shining upward into the night sky where it serves no useful purpose and is needless waste of energy.
   b) Prevent glare in our line-of-sight, which is a safety hazard.
   c) Prevent light intruding into private properties and households.

I am a serious amateur astronomer living in [redacted] and own a backyard astronomical observatory. I occasionally conduct educational and observational astronomy talks to small public groups [redacted] in my back yard, providing these groups an opportunity to view the night sky using the telescopes in my observatory. I am concerned about the adverse effect the proposed highway improvements could potentially have on my ability to enjoy my hobby and backyard observatory. During the 18 years I have lived in [redacted] I have noticed a significant increase in nighttime sky glow, particularly to the north. I am concerned that the construction of the Windsor-Essex Parkway will contribute to the further detriment of my view of nighttime sky from my backyard observatory, unless full cut-off and shielded roadway lighting fixtures are adopted for use along the Parkway.

As an astronomer and environmental engineer, I appreciate the importance of minimizing light pollution and light trespass, at the same time ensuring a safe and energy efficient living environment. Full cut-off and shielded roadway lighting fixtures are currently in use at some County intersections along Highway 3, as well as along many municipal roadways in the Town of LaSalle. These distribute light downward in the intended area, without glare. Through the use of full cut-off or shielded lighting fixtures, we can increase nighttime visibility and public safety, conserve energy and consequently reduce air pollution, be good neighbors, and regain our disappearing view of the starry night sky.

Few people recognize that a conventional high-pressure sodium (HPS) "cobra head" street light fixture may generally be replaced with a full cut-off HPS fixture having half the wattage. This translates into a savings in electrical energy and consequently, the reduction in energy demand displace acid-rain, smog and greenhouse gases that would have been produced by fossil-fuelled electric generating stations at Ontario Power Generation (OPG). The use of full cut-off or shielded light fixtures is good environmental sense.

With respect to noise, over the 18 years I have lived in [redacted] I have noticed a significant increase in road noise, mostly as consequence of increased traffic (particularly truck traffic) along Highway 3.

I understand that it is common practice to require that air conditioning be provided in homes constructed in areas where nighttime sound levels due to road traffic are excessive. It should be realized, however, that with more household air conditioning systems required to operate at night because of excessive nighttime sound levels, electrical energy demand is increased which results in increased acid-rain, smog and greenhouse gas emissions from OPG stations and results in poorer regional air quality. The use of engineered noise barriers along the high way would encourage less reliance on household air conditioning systems and more use of natural ventilation, particularly

when nighttime outside air temperature and humidity are low. In addition, without compromising road way durability and maintainability, the use of alternative road paving materials that reduce traffic noise, such as Asphalt-Rubber (AR) or Rubber Modified Asphalt Concrete (RMAC), should be considered.

Should you require additional information on these important issues or have any questions, please do not hesitate to contact me (daytime: [redacted] or [redacted] evening: [redacted]. I look forward to hearing from you with regard to the concerns expressed herein. Thank you.

[redacted]

[redacted]

Tel: [redacted]
Email: [redacted]

Tel: 905.882.4401, ext. 187 Fax: 905.882.4399
E-mail: george_katic@urscorp.com

----- Forwarded by George Katic/Toronto/URSCorp on 12/11/2008 03:39 PM -----

<mccormick.bj@HydroOne.com>

12/11/2008 03:23 PM

To <mike.harrison@ontario.ca>, <kevin.devos@ontario.ca>, <rhassall@morrisonhershfield.com>, <george_katic@urscorp.com>, <murray_thompson@urscorp.com>

cc <Ramona.Munteanu@HydroOne.com>, <chris.vanderreest@HydroOne.com>, <tibor.kertesz@HydroOne.com>, <ierullo@HydroOne.com>, <george.watt@HydroOne.com>, <vladimir.gracic@HydroOne.com>

Subject Detroit River International Crossing project - Environmental Assessment Report

At our last meeting, I promised to summarize recommended changes to the Detroit River International Crossing project - EA.

1. Chapter 10 of the EA should very clearly state that an effect of the undertaking is the relocation of existing Hydro One transmission facilities and the need to acquire additional lands for future facilities. I would expect to see this described in Section 10.2.4 Socio-Economic Environment (Impacts to Existing and Planned Land Use). In this same section, there should be a firm commitment to compensation (eg to cover the costs of acquiring acceptable land and/or property rights).

2. In the evaluation of alternative plans (Chapter 6), the relocation of facilities should be identified as a negative effect (albeit mitigable) of the preferred plan.

3. Chapter 11 should include commitments to Hydro One to continued consultation/negotiation and reassurance that the electricity ratepayers of Ontario and Hydro One will not be negatively impacted by the proposed plan. The potential contamination and clean-up of the OPG ash site can be a significant liability and must be a component of the recommended mitigation plan.

4. Chapter 3 should describe the consultation to date with Hydro One. It should summarize the concerns expressed to the MTO consulting team about the need to relocate facilities and to acquire additional land north of the Plaza (ie which otherwise would have occurred on the Plaza site).

Overall, the EA should provide the rationale (ie project need) for Hydro One to gain EA Act approval of the facility relocations and to address site selection and consultation issues. It is important to understand that if we were to expand existing facilities, they would not be subject to EA Act approval. A new site is subject to the Act. Your EA should be helpful in minimizing any future challenges to the use of this site and any demands for full blown site selection studies (ie your EA must not be silent on the matter). We will reference your EA in our future EA submission.

Ministry of the Environment

Environmental Assessment and Approvals Branch

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Ministère de l'Environnement

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Ontario

December 11, 2008

MEMORANDUM

TO: Roger Ward
Senior Project Manager
Ministry of Transportation

FROM: Catherine McLennon
Special Project Officer
Environmental Assessment and Approvals Branch

RE: Detroit River International Crossing Study Draft Environmental Assessment, November 2008
EA FILE NO. EA 02 07

I have reviewed the November 2008 draft Environmental Assessment (EA) and offer the following comments for your consideration.

General Comments

1. The final EA should also be available on CD.
2. EA Code of Practice requirements (document available at: http://www.ene.gov.on.ca/envision/env_reg/er/documents/2008/010-1259a.pdf)
   a. Include in the final EA a tabular summary of Terms of Reference commitments and where in the EA they are discussed (see section 4.3.3 of Code of Practice).
   b. Include in the final EA a tabular summary of EA commitments, where in the EA they were made and generally when they will be fulfilled (see section 4.3.5 of Code of Practice).

Specific Comments

1. Page A-1 – *Environmental Assessment Act* approval, if given, would apply only to the Ministry of Transportation (MTO) and the portion of the undertaking under provincial jurisdiction. Make that clear here and when describing the undertaking for which MTO is seeking approval.
2. Page A-2 – The amending procedure is a standard one that MTO uses for individual EAs. The Ministry of the Environment (MOE) is currently working with MTO on potential

changes to the MTO Class EA, including the chapter 10 amending procedure. As a result of that work, further comments on this section may be made at the final EA stage. For now, include in section A.2 the requirement for MOE oversight/involvement regarding determination of significance of proposed changes.

3. Page 1-5, OEAA process products
   a. First Agency & Public Review – should be a 7 week review period (was 8 weeks because submission was previously expected just before Christmas).
   b. MOE will take some time after the "MOE Prepares Review" stage to translate the Review into French as the undertaking is proposed for an area to which the *French Language Services Act* applies (Essex County, City of Windsor).
   c. Remove the * from the 2nd "Agency & Public Review" and "Minister's Decision" periods.
4. Page 3-22, section 3.6
   a. Can a comment and response summary be provided much like for the open house summaries?
   b. It is stated that 12 meetings have been held with the First Nations. Other than Walpole Island, with which other community(ies) were meetings held?
5. Page 4-3, section 4.2.1 – To be consistent with other sections in chapter 4, consider adding some data to this section rather than just referring the reader to the supporting document.
6. Page 4-3, section 4.2.2 – The trend illustrated in table 4.2 starts in 2001, not mid-1990's as the text preceding the table suggests.
7. Page 4-24, section 4.6.3 – Where is the detailed information for Vegetation and Vegetation Communities located? Other sections present more information then refer the reader to supporting documentation.
8. Page 4-28 – The text on the map is difficult to read. This comment applies to several other Exhibits as well.
9. Page 4-29 – What do the blank columns in the table mean?
10. Page 5-5, Table 5.4 – How is "future" defined? What is the reason for there being no difference between 2004 and future statistics for cars?
11. Page 6-1
    a. 3rd paragraph – Reference should be made to Exhibit 6.17 not 6.16
    b. Last set of bullets on the page – Where in the Terms of Reference are these objectives identified?
12. Page 6-8 – How do the areas in the four columns match up to East Plaza, Central Plaza and South Plaza sites?
13. Page 6-9 – Zug Island is not identifiable on Exhibit 6.6 (or Exhibits 6.2 or 6.11).
14. Page 6-18 – Should the numbers in the last column for performance measures "Parklands" and "Archaeological Sites" be reversed?
15. Page 6-20 – In the end, are the public and other interested persons (i.e. Community Consultation Group) in general agreement with the factor weightings?
16. Page 6-24 – Is it CC-CF-SM that is the preferred route segment? Discussion on page 6-21 seems to suggest that.

17. Page 6-26 – Where is the tabular assessment of X13 and X14 (to be consistent with how other crossing information presented)?
18. Pages 6-29 and 6-33
    a. It is not immediately clear how the text description in the bullets at the top of page 6-29 match up with the columns in the table on page 6-33. The columns do not appear to be in the same order as the bullets. Being consistent here and then in the discussion that follows is important since the alternatives have similar names. Providing route segment information may help.
    b. The conclusion on page 6-29 about "Impact to Community and Neighbourhood Characteristics" does not appear to coincide with the information on page 6-33. Based on the information on page 6-33 alone, it appears that Huron Church (HCR)/Talbot corridor will have a greater impact than the Talbot Road by-pass (35 more houses and 20 more businesses displaced; disruptions about the same).
    c. 2nd column of text on page 6-29 – paragraph 1 should say 45 businesses displaced; paragraph 2 should say 25 businesses impacted (to match page 6-33)
    d. 2nd column, paragraph 3 on page 6-29 – Should it be within "200" metres of centre line, not 250 metres (to match page 6-33)
    e. 2nd column, paragraph 3 on page 6-29 – The 1370 households referenced here for Huron Church/Talbot Road corresponds to the last column in the table on page 6-33. Is the discussion on page 6-29 meant to relate to the last column? The question is asked as previously in the last paragraph in the 1st column on page 6-29, Huron Church/Talbot Road matched column one in the table on page 6-33.
    f. 2nd column, paragraph 3 on page 6-29 – For ECR/Rail Corridor, disrupted households is 1370 but according to page 6-33 it is 1890.
19. Page 6-31 and 6-33
    a. "Impacts to Natural Environment" discussion, last paragraph, page 6-31 – Only one alternative appears to sever natural areas (route in last column in table on page 6-33). From the information on page 6-33, no far superior alternative seems to emerge as argued on page 6-31.
20. Page 6-34 – Where is the tabular summary of the information presented on this page (to be consistent with how other crossing information presented)?
21. Page 6-37
    a. The decision rules (i.e. how an alternative is eliminated from or kept in the analysis) should be stated before the analysis begins. For example, in the paragraph directly under "Weighted Scores", it mentions decision rules. That should be expanded and brought up front (i.e. before getting into the Reasoned Argument Discussion). This will lend to the traceability of the ensuing discussion.
    b. The paragraph at the end of the 1st column of text on the page seems out of place. Should the conclusion about the area of continued study not come after the arithmetic method evaluation (at the end of page 6-41 for example)?
    c. It appears from the third paragraph under unweighted scores that "reasoning" was applied to the arithmetic method evaluation and resulted in the elimination of alternatives. Should this occur given that the arithmetic method is strictly a numbers

exercise? If reasoning is to be applied, then this must be made clear in the decision rules.

22. Page 6-38 – How is high, moderate, and low impacts determined? A brief explanation should be included in the EA.
23. Page 6-41 – How were the scores in Table 6-13 determined. Checking chapter 3 as the last paragraph on page 6-37 states does not provide the requisite information. A brief explanation should be included in the EA.
24. Page 6-46, section 6.5.2 – As X12 is the "twinning" of the Ambassador Bridge (i.e. constructing a new bridge proximate to the existing), the statement at the end of the 1st paragraph that this alternative would not provide a new crossing does not make sense.
25. Page 6-47, section 6.6
    a. End of 1st paragraph states "from Broadway Avenue to Brock Street in Sandwich Towne" – these areas are not evident on Exhibit 6.17.
    b. According to Exhibit 6.15 on page 6-41, CC1 and CC4 are also in the Area of Continued Analysis (ACA). The 2nd paragraph in section 6.6 does not reflect this.
26. Page 7-8, section 7.2.1 –There appears to be a truncated discussion about noise effects. More detail is needed for the EA. ROW is mentioned in the 1st paragraph on the page, how does that relate to the ACA or the Area of Investigation?
27. Pages 7-12 to 7-30 – Exhibit 7-11 is referenced incorrectly numerous times on these pages.
28. Pages 7-19 and 7-20 – Why is there a discussion of businesses in this section of the document? The information is somewhat repeated in section 7.2.3 where it likely belongs.
29. Page 7-20, Social Features – The Exhibit should be labelled Exhibit 7.7 not 7.13.
30. Page 7-25 – The paragraph above Exhibit 7.8 does not relate to delivery of emergency services.
31. Pages 7-25 and 7-26, section 7.2.3 – Is there a reason for limited detail being offered for economic conditions compared to other parts of the environment?
32. Page 7-38 – What is the difference between ASI and URS in table 7.12 and also 7.13 on page 7-40?
33. Page 7-49, section 7.5.3 – The reference in paragraph 2 should be to Exhibit 7.27.
34. Page 8-9 – When and how were the measures for the various evaluation factors developed? Disruption was not used as a measure. Previous analyses used both displacement (acquisition) and disruption.
35. Page 8-11, Summary discussion – Broadway Street not mentioned previously. What are some of the indirect and nuisance effects expected?
36. Page 8-13, Summary discussion
    a. It is stated that the differences in air quality between Plaza B and C are notable. This is not evident from page 8-12 where the exact same information is given for air quality of both plazas.
    b. The last sentence in the summary about cost being considered of greater importance than impacts to natural features contradicts the ranking provided at the outset that ranked protecting the natural environment (rating 90) higher than cost and constructability (rating 75).

37. Page 8-15, Summary discussion – Cost and constructability issues with Crossing C- Plaza B should be mentioned in the summary on page 8-13 as it is relevant there as well (discussion in cost and constructability row also different for the exact same alternative).
38. Pages 8-16 to 8-20 – The way in which the information is presented in the tables is different than the way similar information is presented in table 6.13 on page 6-41. The same question applies about how the numbers were determined (see also comment 23 above). Provide a brief explanation with the tables in the EA.
39. Page 8-21
    a. As this section presents a bi-national evaluation, more information is required about the US side for "Community and Neighbourhood Characteristics" and "Natural Features" (for crossings X-10A and X-10B).
    b. In the "Existing and Planned Land Use" discussion, reference is made in the third paragraph to Crossing X-10. Is that X-10A or X-10B or both?
40. Page 8-26 – In the opening sentence, reference should be to Exhibits 8.7 to 8.11. In the last sentence, reference should be to Exhibit 8.12.
41. Page 10-1 – The last three documents in the bulleted list are marked draft. Will they be finalized?
42. Section 10 – Much of the information in this section presents conclusions but not the detailed technical studies from which the conclusions were drawn. As these technical studies were not provided with the draft EA, comments on this section will be reserved until the final EA and the technical studies are submitted. In the final EA, reference the technical studies that led to the conclusions within each subsection so the reader knows exactly where to go to find more detailed information.

If there are any questions about the above, please let me know.

Cath McL

Catherine McLennon

Environment Canada | Environnement Canada

Environmental Protection Operations Division - Ontario
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Burlington, Ontario L7R 4A6

Our File Notre reference
2002-015
Your File Votre reference
URS Canada Project # 33015835.0DISB

December 12, 2008

Mr. Roger Ward
Senior Project Manager
Ministry of Transportation
Windsor Border Initiatives Implementation Group
949 McDougall Avenue, Suite 200
Windsor, Ontario
N9A 1L9

Dear Mr. Ward,

Re: Detroit River International Crossing Study, Windsor, Ontario
Proponent: Ontario Ministry of Transportation

This is in response to the letter from the Consultant Project Manager (Thompson/Shaw) dated November 11, 2008, requesting comments from Environment Canada (EC) on the draft Environmental Assessment (EA) Report prepared under the *Ontario Environmental Assessment Act*. Our comments are provided to the Ontario Ministry of Transportation (MTO) on behalf of EC in context of our role as a government review agency. Thank you for the opportunity to comment on this project.

We have reviewed the draft Environmental Assessment Report, Individual Environmental Assessment, W.O. 04-33-002, Detroit River International Crossing Study, City of Windsor, County of Essex, Town of LaSalle, Town of Tecumseh, November 2008 prepared by URS Canada (the EA Report).

The following comments are intended to assist you in finalizing the assessment, and relate to our areas of interest and expertise arising from the legislation and policies within EC's mandate. Our comments specifically pertain to the potential effects of this project during its construction, maintenance and operation, and, are related to water quality, air quality, toxics management, migratory birds, and species at risk. Please note that we have a regulatory interest in these factors as administrators of section 36 of the *Fisheries Act*, the *Canadian Environmental Protection Act 1999*, the *Migratory Birds Convention Act 1994*, and *Species at Risk Act*, respectively Environment Canada's departmental interests in these environmental factors and the background context and requirements of relevant legislation, that are included in the appendix at the end of this letter, should also be referred to when reviewing our comments and recommendations.

The draft EA Report summarizes the findings documented in detailed assessment reports, however the information included for the assessment of the technically and environmentally preferred alternative (TEPA) is somewhat limited. EC has not yet had an opportunity to review the technical supporting documents so is unable to comment on the basis for the conclusions made regarding potential effects of the TEPA. Also, as we have just recently received additional information on the air quality analyses[1], including analyses that specifically consider the TEPA, and in light of the very tight review timeline and other priorities, EC is not able to provide comments on the air quality assessment. However, in EC's opinion, Chapter 10 could include more specific information on the environmental effects of project implementation and proposed mitigation and monitoring, particularly in areas where sensitive receptors and/or ecosystems are likely to be substantially impacted.

[1] Response to EC's prior comments sent by email dated December 5, 2008 (Wright/Shaw) and notice of release of the technical supporting document for the air quality assessment entitled: "Canada-United States-Ontario-Michigan Border Transportation Partnership, Air Quality Impact Assessment, Technical and Environmentally Preferred Alternative, December 2008".

Also, EC recommends that the EA Report include the following:

- **A separate section dedicated to the characterization and assessment of effects on surface water and groundwater resources, including its quality, quantity and ecological functions, community water uses, etc.**
- **A preliminary assessment of potential effects on migratory birds due to the two distinct bridge types to be considered and a range of likely design options for each bridge, given the lack of pertinent data at this time to support a detailed assessment.**
- **A summary encompassing all species at risk that are currently described in the sections on wildlife, vegetation, and fish (this could be included in the summary table under section 10.5).**
- **A consideration of transboundary environmental effects due to construction and operation of the project in and adjacent to the Detroit River and international boundary.**

See our comments below for further discussion supporting the main comments and recommendations above.

Specific comments for your consideration follow:

Water Quality and Quantity

The Terms of Reference for the Individual EA indicates that surface water and groundwater quality and quantity should be considered. EC notes that the draft EA Report does not have sections dedicated exclusively to the consideration of these environmental components.

- The assessment of surface water and groundwater do not appear to have been carried out consistent with technical requirements in the MTO's Environmental References for Highway Design, Sections 3.11 and 3.3, respectively.
  - Of note, baseline information on water quality in watercourses and groundwater resources potentially impacted by the proposed undertaking (TEPA) are not included.
- We also note that effects of the TEPA on surface water and groundwater are considered under the sections on 'Fish and Fish Habitat' and 'Drainage and Stormwater Management'; however, the assessment of potential effects is limited to fish and fish habitat only and appears to be based on unsubstantiated statements, as reference was not made to any specific baseline information. Also, any potential transboundary effects that may be experienced in the United States, due to bridge operation and in-water works close to the international border, should be described.
- If baseline water quality data indicates that certain parameters are at or near threshold levels identified in provincial and federal water quality guidelines, project discharges could potentially cause exceedances of these levels in receiving waters, notwithstanding the proposed enhanced level of stormwater treatment (rated at 80% suspended sediment removal). Alternatively, if receiving water quality is expected to improve, in some locations, this should be discussed and fully substantiated.

  Many of the watercourses on site receiving stormwater runoff from the project drain to Turkey Creek/Grand Marais Drain or other local drains that ultimately flow into the Detroit River. As the Detroit River is designated as an Area of Concern (AOC) by the International Joint Commission, a Remedial Action Plan (RAP) has been developed for this AOC (http://www.on.ec.gc.ca/water/raps/detroit/intro_e.html). Major environmental issues of concern have been identified in the AOC and are priorities in the RAP, notably those related to municipal discharges, exceedances of water quality objectives, contaminated sediments, and habitat degradation. Given EC's interests under the Great Lakes Water Quality Agreement and Canada-Ontario Agreement Respecting the Great Lakes Basin Ecosystem,

EC recommends that the updated EA Report clearly identify whether the level of mitigation proposed for stormwater runoff from the project helps to improve, protects, or impairs water quality in Turkey Creek and its tributaries, and other local creeks/drains in the project area that discharge directly to the Detroit River.

- Effects on other environmental and socio-economic components (e.g., vegetation communities, recreational users, etc.), due to potential project effects on surface and groundwater resources, should also be considered and assessed.
- EC recommends that all of the foregoing considerations be included in the updated EA Report.

In regard to the proposed stormwater management plan, in our comments to URS Canada by email dated July 16, 2008, EC previously indicated that "*an assessment of SWMM plans for the proposed bridge alternatives were not included*" in the stormwater management plan at that time. We have not yet received responses indicating how our comments have been addressed, nor have we received the updated technical supporting document for review. We are pleased to note that the EA Report states: "*deck drains are not proposed on the crossing and runoff will be collected for quality treatment -prior to discharge to the river*" (p. 10-18); however, specific details are not provided on the location, configuration and expected performance of the proposed stormwater management measures for the international bridge crossing. EC recommends that additional information be included in the EA Report on the proposed stormwater management plan for the international bridge crossing (including proposed spills contingency/management plans, and measures to minimize use of de-icing chemicals[2] and their potential adverse effects on the environment).

Wildlife, Including Migratory Birds and Species at Risk Issues

The loss of fish and wildlife habitat and degradation of fish and wildlife populations are major impairments that led to the designation of the Detroit River as an AOC. Restoring healthy and abundant fish and wildlife populations and protecting and rehabilitating existing natural habitat areas are, therefore, priorities of the Detroit River RAP. The primary focus is on restoring wetland habitat, naturalizing hardened shorelines, restoring in-river fish spawning habitat that has been lost, and creating linkages from the river to major habitat areas such as Black Oak Woods and the Ojibway Prairie Complex. Therefore, it is important that the project be implemented in a manner consistent with the objectives of the relevant Remedial Action Plans and Lakewide Management Plans. The following comments take into regard these objectives.

Migratory Birds

Project construction, operation or maintenance activities such as vegetation clearing and grubbing, site access, excavation and piling of soil/fill, etc., could result in the incidental take of migratory birds or their nests if conducted in migratory bird habitat during the breeding season. The removal of vegetation also has the potential to reduce habitat for birds, and construction, operation or maintenance activities could disturb nearby breeding birds and disrupt breeding.

To avoid incidental take during construction, the project works and activities that may affect migratory bird habitat should be timed to occur outside of the breeding season. We recommend that the following mitigation measures be implemented by the proponent to avoid significant adverse environmental effects on migratory bird species potentially breeding in the project area as identified in the proponent's bird survey:

- Construction activities with the potential to destroy migratory birds, such as vegetation clearing, should not take place in migratory bird habitat during the breeding season, defined for the following habitat types in the project region as:
    - Forest: May 9 – July 23
    - Open: May 1 - July 23

[2] Some de-icing products typically used for bridge maintenance may contain additives high in ammonia, phosphorus and organics that may be deleterious to fish:
<http://www.dot.state.co.us/publications/PDFFiles/3chemicaldeicers.pdf>
<http://www.northsidesupplies.com/Lower%20Phosphorus%20Roadway%20De-Icers.htm>

- If the works must be conducted within breeding bird habitat during the identified breeding season for migratory birds, a nest survey should be conducted by a qualified avian biologist immediately prior to commencement of the works to identify and locate active nests of species covered by the *Migratory Birds Convention Act, 1994*. A mitigation plan (which may include establishing appropriate buffers around active nests) should then be developed to address any potential impacts on migratory birds or their active nests, and should be reviewed by Environment Canada prior to implementation.

In regard to operational effects of the project, notably the international bridge crossing, EC notes that a preferred bridge design will be chosen at a later date (s. 9.1.2, p. 9-3) from two bridge types: a suspension bridge or a cable stayed bridge, both of which are supported by a network of steel cables. EC notes that migratory birds (primarily nocturnal passerine migrants) flying along, or across, the Detroit River at the bridge location may potentially be adversely impacted by a tall structure with supporting cables which could pose a collision risk. The following design parameters relevant to this issue are as follows (pp. 9-2, 9-3):

Suspension Bridge
Height above river surface to bottom of structure: 40.5 m to 46.3 m (133 ft to 152 ft)
Tower height above footing (assumed to be at water level): 140 m (459 ft)
- Superstructure height (towers above top of navigational clearance): 99.5 m (326 ft)
Suspended main span above river (clear): 855 m (2805')
Backstay spans (unsupported by cables at each end of bridge): 250 m (820 ft)
- Approximate profile area[3] of hanger cables & bridge deck across river: 42,536 m^2 (457,842 ft^2)

Cable Stayed Bridge
Height above river surface to bottom of structure: 40.5 m to 46.3 m (133 ft to 152 ft)
Tower height above footing (assumed to be at water level): 250 m (820 ft)
- Superstructure height (towers above top of navigational clearance): 209.5 m (687 ft)
Suspended main span above river (clear): 840 m (2756 ft)
Symmetric side spans (supported on cables at each end): 320 m (1050 ft)
- Approximate profile area of hanger cables & bridge deck across river: 155,030 m^2 (1,668,688 ft^2)

As can be seen from the above profile estimates, a cable stayed bridge would have a superstructure profile area 3.6 times that of a suspension bridge (ignoring any profile effects due to the main support cables from the top of suspension bridge tower to the ground anchorages). Therefore, depending on migratory bird use of the area, flying heights and weather conditions, EC would expect that a cable stayed design would pose a greater collision risk to birds than a suspension bridge design, particularly in light of its significantly larger profile area and increasingly dense cable hanger configuration with height.

EC notes that the information necessary to determine whether a particular bridge design would present undue risk to migratory birds due to collision mortality (associated with the bridge superstructure) at this site is not yet available. EC understands that the proponent intends to undertake further studies on: '*species, populations and behaviours of migratory bird species in the vicinity of the Detroit River crossing*' (p. 10—15), and also that that '*Radar studies and point count surveys should be carried out*', and we agree that additional studies should be undertaken to inform the bridge design and lighting. However, EC requests the opportunity to review and comment on the proposed work plans for the radar and other migratory bird studies associated with the bridge crossing. Also, it is not clear to EC whether these studies can be carried out in time to be considered under subsequent stages of the provincial EA review. Therefore, EC recommends the following approach be adopted to enable an adequate consideration of this issue, and to help minimize the potential for, and significance of, any adverse effects on migratory birds due to operation of the international bridge.

- Work plans for the radar and other migratory bird studies associated with the bridge crossing should be provided to EC as soon as possible[4] for review to help ensure that study

[3] Estimated by EC as 0.5 x total cabled width (with hangers) x superstructure height above top of navigational clearance (for both bridge types)

[4] The work plans should be provided well in advance of the busy spring monitoring period to facilitate a more timely review.

procedures are appropriate. The studies to identify migratory bird species, populations and behaviours in the vicinity of the Detroit River crossing, including radar studies and point count surveys should be undertaken at an appropriate time next spring (to capture the main migration and nesting period) and study results provided to EC for review as soon as available. Based on EC's review of the spring study results, the need for additional fall studies will be identified.

- The MTO, Transport Canada and its bi-national partners should commit to working closely with EC, Ontario Ministry of Natural Resources, the U.S. Fish and Wildlife Service, and the Michigan Department of Natural Resources to identify any issues of concern to birds related to specific design options being considered for each bridge type; and, the preferred bridge design and any proposed lighting.

In summary, EC recommends that the EA for this project should fully assess impacts on migratory birds and their habitats as indicated in our comments above, propose measures to mitigate adverse environmental effects, and fully document the assessment in the updated EA Report. Such mitigation measures should also be reflected in the choice and configuration of the preferred bridge design, and construction environmental specifications.

Please note that these recommendations are solely intended to avoid significant adverse environmental effects on migratory birds. This advice does not provide an authorization for incidental take or for the disturbance, destruction or taking of nests under the *Migratory Bird Regulations* (MBRs), nor does it provide a guarantee that contravention of the MBRs will be avoided. It remains the proponent's responsibility to meet the requirements of the MBRs and to pursue any further measures that may be necessary to ensure compliance.

Species at Risk Issues

Based on the information provided in the EA Report, EC understands that construction of the project will likely impact a number of species at risk (SAR) listed on Schedule 1 of the federal *Species at Risk Act* (SARA), notably the western section of the Windsor-Essex Parkway and Plaza. EC understands that the lands required to construct the Plaza will be acquired by Transport Canada prior to construction and will ultimately be under federal ownership. At that time, certain provisions of SARA, including prohibitions and potential permitting requirements, may apply to these species. Therefore, EC's Canadian Wildlife Service will need to review specific details of proposed measures and monitoring to address impacts on any species listed under SARA, and to identify any permitting requirements. Pertinent information on these considerations was not included in the EA Report; therefore, EC is unable to provide specific advice on this matter. **EC requests that specific information on potential effects, and proposed mitigation and monitoring, in regards to the species at risk identified in the proposed plaza area, and any species at risk likely to use suitable habitats in this area, be provided to EC for its review.**

Wildlife Habitat and Restoration

In order to be consistent with objectives of the Canadian Biodiversity Strategy (i.e., to preserve the biodiversity of surrounding vegetation and ecosystems) and provide suitable habitat for migratory birds and other wildlife, including SAR, we strongly support the proposed re-vegetation of any disturbed areas or creation of proposed habitat compensation areas using native plant species. However, plants used should be indigenous to the area (and derived from the proposed plant salvage) to the maximum extent possible, and also well adapted to the site conditions and uses. *Use of invasive species should be avoided.* Also, other ecological conditions amenable to specific species should be re-created to the maximum extent possible (e.g., hydrological, soils, and physiographic conditions, etc.).

Monitoring

Proper implementation of all proposed mitigation measures, including those recommended in EC's comments above, is necessary in order to minimize any adverse environmental impacts due to the project. EC supports the project monitoring referenced in section 10.7. However, the MTO or its agent must also take any contingency actions necessary if the monitoring finds that the mitigation measures are not functioning as intended (e.g., suspend/reschedule work; repair/replace damaged mitigation; re-assess, re-design and re-construct, etc.).

Environmental Protection

EC expects that during construction and operation of the TEPA, mitigation measures and monitoring described in our comments above, and documented in the updated EA Report, will be developed in conformance with MTO's Environmental Protection / Technical Requirements, and Environmental Guides; and, implemented utilizing any appropriate standards/environmental provisions/practices referenced in the MTO's Environmental Reference for Contract Preparation.

Closing

In closing, we have identified a number of aspects for which we wish to receive additional information and/or confirmation that the MTO has committed to substantively address the issues raised in our foregoing comments.

Environment Canada's comments and recommendations are intended to provide expert support to project proponents and decision-makers, in accordance with its program related responsibilities and associated guidelines and policies. These comments are in no way to be interpreted as any type of acknowledgement, compliance, permission, approval, authorization, or release of liability related to any requirements to comply with federal or provincial statutes and regulations. Responsibility for achieving regulatory compliance and cost effective risk and liability reduction lies solely with the project proponent.

We trust that the above comments will assist you in completing the EA Report for this project.

Please contact the undersigned if you wish to discuss the above comments.

Yours sincerely,

M. A. Shaw
Environmental Assessment Officer
Environmental Assessment Unit
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cc.
R. Dobos, EC
J Fischer, EC
D. Broadhurst, EC
S. George/L. Cargnelli, EC,
M. Murtaza, CEA Agency
K. Stiff, TC
M. Thompson, URS

D:\FY 2002\2002-015 (Detroit R Crossing - Ont-Mich Transportation)\Correspondence\2002-015-4 (Detroit R Intn'l Crossing draft EA Report).doc

APPENDIX

Regulatory and Policy Context for Environment Canada's Comments and Advice[5]

Environment Canada's mandate to protect the environment and to actively promote sustainable development extends beyond the Department's legislated responsibilities for undertakings that trigger the *Canadian Environmental Assessment Act*. Our review and comments are related, but not limited, to our areas of interest and expertise arising from the following legislation, policies and agreements. More information is available on-line, as indicated in the footnote references below.

1. Legislation

Department of Environment Act

http://laws.justice.gc.ca/en/E-10/text.html

The *Department of Environment Act* provides Environment Canada (EC) with general responsibility for environmental management and protection. Its obligations extend to and include all matters over which Parliament has jurisdiction, and have not by law been assigned to any other department, board, or agency of the Government of Canada as related to: preservation and enhancement of the quality of the natural environment (e.g. water, air, soil), renewable resources including migratory birds and other non-domestic flora and fauna, water, meteorology, and coordination of policy and programs respecting preservation and enhancement of the quality of the natural environment.

The *Department of Environment Act* states that EC has a mandated responsibility to advise heads of federal departments, boards and agencies on matters pertaining to the preservation and enhancement of the quality of the natural environment. This responsibility is reinforced as per subsection 12(3) of CEAA, which states that federal departments must provide specialist and expert information or knowledge to other federal departments or review panels.

Canadian Environmental Protection Act, 1999

http://www.ec.gc.ca/CEPARegistry/subs_list/
http://www.ec.gc.ca/CEPARegistry/policies/

The Canadian Environmental Protection Act, 1999 (CEPA) contributes to sustainable development through pollution prevention and protects the environment, human life and health from the risks associated with toxic substances. Key parts of CEPA include:

- public participation;
- information gathering, objectives, guidelines and codes of practice;
- pollution prevention;
- controlling toxic substances;
- animate products of biotechnology;
- controlling pollution and managing wastes including nutrients, protection of the marine environment, disposal at sea, fuels, vehicle engine and equipment emissions, international air pollution and international water pollution, and hazardous and non-hazardous waste;
- environmental matters related to emergencies including requirements for environmental emergency plans;
- government operations - federal and aboriginal lands including regulations to close any regulatory gap between federal and provincial requirements; and,
- enforcement.

[5] Only those most pertinent to our review advice on this project are included in this appendix.

The Canadian Environmental Protection Act, 1999 enables the government to manage a toxic substance throughout its life cycle. Provisions under CEPA require Environment Canada, under certain conditions, to develop a "regulation or preventive or control instrument" for a substance that is found to be "toxic" under the Act. CEPA further requires the virtual elimination of anthropogenic releases to the environment of substances that are declared toxic and that are bioaccumulative and persistent. CEPA also establishes the requirements for the assessment of chemicals, polymers and products of biotechnology, prior to import or manufacture of substances not on the Domestic Substances List.

Fisheries Act

http://laws.justice.gc.ca/en/F-14/index.html

Environment Canada's mandate to advocate for the protection of water quality stems from the pollution prevention provisions of the *Fisheries Act*, which are administered by EC. Please be advised that the Compliance and Enforcement Policy[6] for the Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act* states that compliance with the federal *Fisheries Act* is mandatory. Subsection 36(3) of the *Fisheries Act* specifies that, unless authorized by federal regulation, no person shall deposit or permit the deposit of deleterious substances of any type in water frequented by fish, or in any place under any conditions where the deleterious substance, or any other deleterious substance that results from the deposit of the deleterious substance, may enter any such water. Proponents should note that only a federal regulation under the *Fisheries Act* or another Act of Parliament can authorize a discharge of a deleterious substance; no federal permit, provincial, territorial or municipal regulatory permit or approval allows for exemption from the *Fisheries Act*.

In the application of the *Fisheries Act*, court cases have accepted that a discharge or effluent that is acutely lethal to fish is deleterious. In other words, results of tests designed to determine whether fish will die in an effluent or discharge within a specified time period will determine one aspect of deleteriousness. However, any substance with a potentially harmful chemical, physical or biological effect on fish or fish habitat is also deleterious. For example, substances (such as sediment) that smother nesting areas or spawning grounds, or interfere with reproduction, feeding or respiration of fish at any point in their life cycle are also considered deleterious. In general, any substance with a potentially harmful chemical, physical or biological effect on fish or fish habitat may be considered deleterious.

The act of depositing a deleterious substance should be considered a violation of the *Fisheries Act*, regardless of whether the water itself is made deleterious by the deposit. Subsection 36(3) of the *Fisheries Act* makes no allowance for a mixing or dilution zone. Any measurements or tests to determine whether something is deleterious should be done where the substance is at its highest concentration, typically at the point of discharge to the receiving water.

International Boundary Waters Treaty Act 2002 (recently amended)

The *International Boundary Waters Treaty Act*, administered by the Department of Foreign Affairs and International Trade, implements the 1909 Boundary Waters Treaty between Great Britain (on behalf of Canada) and the United States. The Treaty outlines principles and guidelines for the management of boundary and transboundary waters by Canada and the United States, with the primary objective of preventing or resolving disputes regarding the water quality and quantity of shared water resources. While Foreign Affairs and International Trade is responsible for the Act itself, the Minister of Environment is responsible for enforcement of orders made by the International Joint Commission.

[6] For more info please refer to: <http://www.ec.gc.ca/ele-ale/default.asp?lang=en&n=D6765D33>

Migratory Birds Convention Act, 1994
http://www.cws-scf.ec.gc.ca/legislations/laws1_e.cfm

The disturbance, destruction or taking of a nest, egg, nest shelter, eider duck shelter or duck box of a migratory bird are prohibited under section 6 of the *Migratory Bird Regulations* (MBRs), under the authority of the *Migratory Birds Convention Act, 1994* (MBCA)*. "Incidental take" is the killing or harming of migratory birds due to actions, such as economic development, which are not primarily focused on taking migratory birds. No permit can be issued for the incidental take of migratory birds or their nests as a result of economic activities.

Under section 5.1 of the MBCA, no person shall deposit or permit to be deposited oil, oil wastes or any other substance harmful to migratory birds in any waters or any area frequented by migratory birds.

Species at Risk Act
http://www.sararegistry.gc.ca/default_e.cfm

The *Species at Risk Act* (SARA) has resulted in a consequential amendment to CEAA that amends the definition of "environmental effect" to clarify that all federal EAs must always consider adverse effects on listed wildlife species, and the critical habitat or residences of individuals of that species. In addition, section 79(2) of SARA requires that when a federal EA is carried out on a project that may affect a listed species or its critical habitat, adverse environmental effects must be identified, mitigation measures must be taken to avoid or lessen adverse effects, and environmental effects monitoring must be conducted.

SARA was proclaimed on June 5, 2003 and is intended to provide protection for individuals of wildlife species at risk listed under Schedule 1 of the Act, their residences (dwelling places, such as a den or nest or other similar area that is occupied or habitually occupied by one or more individual during part or all of its life cycle) and critical habitat (that part of areas used or formerly used by the species to carry out their life processes that is deemed essential for survival or recovery). Critical habitat will be identified for each listed species in Recovery Strategies or Action Plans. The prohibitions under SARA came into force on June 1, 2004 and apply to listed (Schedule I) endangered and threatened species for all federally protected aquatic species and migratory birds (including their residences) found anywhere, as well as to all endangered and threatened species, when found on federal lands.

> Pursuant to Section 79(1) of SARA, if any listed wildlife species, its critical habitat or the residences of individuals of that species may be adversely impacted by the project, the Responsible Authorities for the CEAA assessment must notify the competent Minister responsible for the listed species in writing. Fisheries and Ocean Canada is responsible for aquatic species at risk and can provide advice regarding potential impacts on these species covered under the *Fisheries Act*. Notifications in relation to listed terrestrial species are to be sent to EC, and for this project may be sent to my attention.

One of the purposes of SARA is to to manage species of special concern to prevent them from becoming endangered or threatened. In this context, we also recommend that all federal EAs consider potential impacts on any species listed by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC). http://www.cosewic.gc.ca/eng/sct5/index_e.cfm

2. Policies

* Please note that amendments to the MBCA in Bill C-15 came into force on June 28, 2005. This pollution prohibition was previously contained in s.35(1) of the *Migratory Bird Regulations*, which has now been repealed and is included as s.5.1 of the amended MBCA, 1994.

Federal Policy on Wetland Conservation
http://www.ramsar.org/wurc/wurc_policy_canada.htm

The Federal Policy on Wetland Conservation, 1991 is a shared federal responsibility that directs all departments to sustain wetland functions in the delivery of their programs, services or expenditures. The goals of the Policy include: maintaining the functions and values of wetlands; ensuring no net loss of wetland functions on all federal lands and waters; enhancing and rehabilitating wetlands in areas prone to degradation and loss; recognizing wetland functions in resource planning and management with regard to federal programs, policies and activities; securing significant wetlands; and recognizing and utilizing sustainable management practices to conserve wetlands.

The Federal Water Policy
http://www.ec.gc.ca/water/en/info/pubs/fedpol/e_fedpol.htm

The Federal Water Policy addresses the management of water resources, balancing water uses with the requirements of the many interrelationships within the ecosystem. The policy takes into account the needs of all Canadians in its overall objective to encourage the use of freshwater in an efficient and equitable manner consistent with the social, economic and environmental needs of present and future generations.

To manage Canada's water resources, the federal government has defined two main goals:
- to protect and enhance the quality of the water resource; and,
- to promote the wise and efficient management and use of water.

The policy stresses that government action is not enough. Canadians at large must become aware of the true value of water in their daily lives and use it wisely. We cannot afford to continue undervaluing and therefore wasting our water resources.

3. Agreements

Great Lakes Water Quality Agreement and Canada-Ontario Agreement Respecting the Great Lakes Basin Ecosystem
http://www.on.ec.gc.ca/greatlakes/default.asp?lang=En&n=FD65DFE5-1

1) Lakewide Management Plans <http://www.ene.gov.on.ca/envision/water/lamps/index.htm >

The *Great Lakes Water Quality Agreement* (GLWQA), first signed in 1972 and renewed in 1978, expresses the commitment of Canada and the United States to restore and maintain the chemical, physical and biological integrity of the Great Lakes Basin Ecosystem and includes a number of objectives and guidelines to achieve these goals. In 1987 the governments of Canada and the United States made a commitment, as part of the GLWQA, to develop Lakewide Management Plans (LaMPs) for the Great Lakes. LaMPs have been developed for Lakes Erie, Ontario, Superior and Michigan. The Lakewide Management Plan (LaMP) for Lake Erie is coordinated by federal, state and provincial government agencies in the two countries. Under the guidance of these agencies, the LaMP unites a network of stakeholders in actions to restore and protect the Lake Erie ecosystem. The LaMP provides an opportunity to link their efforts, working towards the common goal of restoring Lake Erie for future generations.

2) Remedial Action Plans <http://www.on.ec.gc.ca/water/raps/map_e.html>

The *Great Lakes Water Quality Agreement*, first signed in 1972 and renewed in 1978, expresses the commitment of Canada and the United States to restore and maintain the chemical, physical and biological integrity of the Great Lakes Basin Ecosystem and includes a number of objectives and guidelines to achieve these goals. The *Canada-Ontario Agreement Respecting the Great Lakes Basin Ecosystem* (COA) is the federal-provincial agreement that contributes to meeting Canada's obligations under the Canada-United States *Great Lakes Water Quality Agreement*. COA commits the governments of Canada and Ontario to restoring and protecting the Great Lakes Basin ecosystem and

focuses on specific remedial actions in priority areas denoted as Areas of Concern, such as those identified in the Detroit River Remedial Action Plan.

Canada-U.S. Air Quality Agreement <http://www.ec.gc.ca/pdb/can_us/canus_links_e.cfm>
This Air Quality Agreement is a commitment from both the Canadian and United States governments to address transboundary air pollution. The Canada – U.S. Air Quality Agreement provides a basic framework for the provision of comments on the nature of any air emissions and controls proposed for a project, particularly for two main substances: sulphur dioxides and nitrogen oxides.

4. Protocols and Strategies

Canadian Biodiversity Strategy <http://www.eman-rese.ca/eman/reports/publications/rt_biostrat/intro.html>
The Canadian Biodiversity Strategy was developed as a guide for the implementation of the United Nation's Biodiversity Convention. The Canadian Biodiversity Strategy emphasizes the importance of intergovernmental co-operation in the creation of new policy, management and research tools in furthering our ecological understanding and management.

Other legislation, agreements and federal policies respecting environmental matters

The above list is not exhaustive; EC may have other interests in this project not identified at this time based on our review of additional information provided at a later date. For further information on EC's mandated interests, please refer to *http://www.ec.gc.ca/EnviroRegs*

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Review of DRIC Draft Environmental Assessment Report W.O. 04-33-002

FROM: Dan Lebedyk, *Conservation Biologist*, Essex Region Conservation Authority
SUBJECT: DRIC; City of Windsor; Canada-United States-Ontario-Michigan Border Transportation Partnership, Detroit River International Crossing and Highway 401 Upgrades; Ojibway Prairie Remnants, St. Clair College Prairie, Various Others SAR Habitat, ANSI, ESA, CNHS, Etc.
DATE: December 10, 2008

Pursuant to review of the above study, the following is provided for your information and consideration.

1) Municipality: **City of Windsor**
2) Property: **Highway 401 to U.S. Border**
3) Proponent: **Canada-United States-Ontario-Michigan Border Transportation Partnership**
4) Project Ref.: **DRIC; W.O. 04-33-002**
5) Proposal: **Detroit River International Crossing and Highway 401 Upgrades**
6) Natural Area: **Ojibway Prairie Remnants, St. Clair College Prairie, Various Others**
7) Significance: **SAR Habitat, ANSI, ESA, CNHS, Etc.**
8) Review and Comment:

a) Was the study carried out by qualified professionals in the field of ecology, terrestrial and/or aquatic biology, environmental planning, and/or other relevant earth sciences?

Yes, the study was carried out by the DRIC study team including professionals from LGL Consulting Limited and URS Canada Inc.

b) Did the study adequately identify and comment on existing significant natural features, linkages, and ecological functions of the study area?

Yes, the study has comprehensively evaluated the natural heritage features and ecological functions within the study area. Field investigations were conducted at appropriate times during the spring, summer and fall seasons and evaluations were conducted utilizing standardized, accepted protocols. Data collection and analysis included investigations of vegetation communities; floral species; faunal species including molluscs, insects, fish, amphibians, reptiles, birds and mammals; fish habitat; wildlife habitat and Species at Risk. Vegetation communities were typified in accordance with the Ecological Land Classification system. All vegetation communities and species accounts included accurate documentation of current rarity status in accordance with COSEWIC, COSSARO and the NHIC database assignments.

Migration corridors for mammals were documented in every habitat and connecting each of the habitat types. Faunal Species at Risk occurrences were associated with defined Wildlife Habitat Units and ELC vegetation communities. In addition, natural heritage designations were documented for all natural areas, including Provincial Nature Reserves, Areas of Natural and Scientific Interest

(ANSIs), Environmentally Significant Areas (ESAs), Carolinian Canada Sites and Candidate Natural Heritage Sites (CNHSs).

c) Did the study explain the nature of the proposed development adequately enough to identify and assess any potential impacts of the proposed development plan on the existing significant natural feature(s)?

Yes, the study has extensively analysed many different alternatives for the proposed access road and different combinations for plaza-crossing locations. Analysis of potential impacts included not only impacts associated with the right-of-way, but the study also investigated impacts within a 120 m adjacent land area. Evaluation criteria and ranking were also established to which the different development scenarios were analysed. The evaluation of alternatives was based on the number, area, type and significance of natural heritage features to be displaced or disturbed by the transportation facility. An arithmetic evaluation method was used to compare the practical alternatives using criteria and indicators. In addition, a reasoned argument evaluation was also conducted in order to consider other variables such as drainage modifications. This analysis has resulted in a Technically and Environmentally Preferred Alternative (TEPA), which consists of the Windsor-Essex Parkway, together with Crossing X-10B, connecting to Plaza B1 in Canada. Both a suspension bridge and a cable-stayed bridge are being carried forward to subsequent stages for analysis, evaluation and selection of the preferred bridge type. As stated in the Draft EA, "*The Technically and Environmentally Preferred Alternative (TEPA) has been developed to a concept design level, with sufficient detail as to confirm feasibility of the proposed infrastructure and to identify the property requirements and the environmental impacts.*"

d) Did the study recommend and discuss actions which would eliminate, mitigate, or compensate (when appropriate) for any/all expected impacts consistent with accepted ecological, planning, engineering and resource management techniques, practices and principles?

Chapter 10.4 of the Draft EA outlines the effects on the natural environment and mitigation of the TEPA. The most significant natural heritage features (i.e., Ojibway Prairie Complex, Detroit River Marshes, etc.) were avoided in the formulation of the TEPA. The proposed crossing will avoid the placement of piers in the Detroit River for both the suspension bridge and cable-stayed bridge options.

Extensive efforts have been made to avoid and minimize impacts to Butler's Gartersnake and Eastern Foxsnake populations including refinements to the alignment of the Windsor-Essex Parkway. Habitat restoration and enhancement will be implemented to create new and higher quality habitat for these species. Snake barriers will be installed alongside portions of the Parkway prior to and after construction to prevent snake mortality. New snake nesting areas and hibernacula will also be created and snakes will be captured and relocated prior to construction.

A no "net loss in area or function" approach is being taken with respect to

significant vegetation communities. Several mitigation measures have been recommended including restoration and enhancement of natural features, transplantation, exotic species removal, etc. Wildlife salvage will be carried out prior to clearing/grubbing to reduce the risk of wildlife mortality. Restoration and enhancement of habitat located along the Windsor-Essex Parkway will be used at strategic locations to reconnect significant wildlife habitat located on both sides of the Parkway. With respect to floral Species at Risk, 8 SAR are found within the TEPA. This includes numerous individuals of Climbing Prairie Rose, Colicroot, Common Hoptree, Dwarf Hackberry, Dense Blazing Star, Kentucky Coffee-tree, Riddell's Goldenrod and Willowleaf Aster located within the right of way for the Windsor-Essex Parkway and the plaza site. The mitigation techniques outlined above will also be employed with the objective of achieving a net benefit to all Regulated Species at Risk populations within the TEPA. Detailed mitigation strategies will be developed for these Species at Risk pursuant to the requirements to obtain permits under the *Ontario Endangered Species Act* and the federal *Species at Risk Act*.

For surface water features, specific environmental protection and mitigation measures have been recommended. Application will be made to secure federal *Fisheries Act* authorizations for all areas affected by the works, during later design stages of the project. Watercourse reaches will be restored and enhanced to maintain no net loss of the productive capacity of fish habitat. A fish passage system, likely fish locks, will ensure that fish will have access to upstream habitats in Cahill and Lennon Drains in perpetuity. Enhancements to realigned reaches and removal of entrance culverts along Wolfe Drain will augment the productive capacities of these systems and will result in an overall net gain of habitat area.

e) Did the study process include agency consultation in order to obtain input, and did the study explain how agency concerns have been addressed?

Yes, agency consultation has been extensive and consideration of ERCA issues relating to natural heritage have been addressed in the process. Further site-specific mitigative measures will be forthcoming in the next stage of the process.

f) Are the recommendations in the study able to satisfy all applicable legislation and policies?

The study process is considering all applicable legislative requirements. Final design and mitigation recommendations will be screened for compliance in the next stage of the process.

g) What is the final recommendation based on the review of the study?

The process has adequately considered relevant issues and legislative requirements with respect to natural heritage. Data collection and analysis has been comprehensive and technically sound. Proposed mitigation in concept appears acceptable. Further analysis relating to site-specifics is pending and will take place in the next stage in the process.

I would be pleased to discuss this review further at your convenience. If you should have any questions, or require any additional information please do not hesitate to contact me.

Yours truly,

Dan Lebedyk,
Conservation Biologist
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"Ward, Roger (MTO)"
<Roger.A.Ward@ontario.ca>
12/12/2008 03:26 PM

To <Murray_Thompson@URSCorp.com>
cc <Jacquie_Dalton@URSCorp.com>, "Joel Foster" <Joel.Foster@ontario.ca>, "Dave Wake" <Dave.Wake@ontario.ca>
bcc
Subject EAComment13_FW: Detroit River InBox - TAA FW: Comments on DRIC Draft EA

See Draft EA comments below

From: River, Detroit (MTO)
Sent: December 12, 2008 3:22 PM
To: Wake, Dave (MTO); Ward, Roger (MTO)
Subject: Detroit River InBox - TAA FW: Comments on DRIC Draft EA

From: [redacted] [mailto[redacted]]
Sent: December 12, 2008 3:15 PM
To: River, Detroit (MTO)
Cc: [redacted]
Subject: Comments on DRIC Draft EA

Friday December 12, 2008

Comments on the DRIC Draft Environmental Assessment

I have been involved in the DRIC process since October of 2003. I attended a public meeting in Lasalle at that time. (Bi-National Partnership).

The Planning needs/feasibility and terms of reference materials were obtuse and difficult for lay people to understand. In the ensuing years, the DRIC team has done a remarkable job in making the study material more accessible and more easily understandable.

I have been a member of the DRIC Community Consultation Group since that group's inception. I have also downloaded and studied large portions of the study. While my main interest is in the natural heritage impacts, I found it necessary to remain informed about all facets of the project in order to speak to natural heritage issues accurately. I have attended over 90 percent of the CCG meetings and PIOH sessions for this project.

As the leader of a local community group, I also had occasion to meet with DRIC team representatives outside of PIOH and CCG meetings. At all times they were respectful, and open to hearing the issues and concerns our group brought forward. Our submissions at the milestone points of the study were noted, as were concerns we had along the way about specific issues. (For example: the bibliography for existing literature relating to the natural heritage portion of the study was incomplete, they were receptive to receiving further documentation.)

I applaud the effort the DRIC Study team has made to make their process transparent and inclusive of public input.
While my own opinion as to the best border route solution is different from the preferred alternative, I am able to trace their decision and understand their rationale.
I believe they have struck a balance of benefits and impacts that is laudable.

The DRIC team faced not only a project of daunting scope and complexity, but a highly volatile local political situation.
DRIC had to engage the public while under constant attack from the City of Windsor, who spent milllions on lawyers, consultants and PR campaigns to discredit them. Often, the City's claims were baseless, manipulative and inflammatory. (eg. The Windsor Mayor's published/broadcast claims that DRIC are here to "destroy our community", council member's published/broadcast claims that the study process, including public involvement , is a "fraud", and that anyone expressing support for DRIC were "hired guns").

That the DRIC team were able to remain on the "high road" throughout is a testament to their professionalism and commitment to a successful project.
I cannot overstate how important this unflappable commitment to fairness of process was. In my opinion, the DRIC team leaders stepped into a leadership vacuum and displayed what real leadership requires: honesty, engagement and steadfastness. It is my belief that this leadership will finally lead to a fix to this area's decades old border traffic problem.

For those of us who live in the affected area (My home is within a kilometre of the preferred WEP route) but who are not represented by the City of Windsor (I am a Lasalle resident), it was easy to feel like any concerns we had would be overwhelmed by the City of Windsor's public relations campaign for their Schwartz Gateway proposal (2005) or Greenlink proposal (2008). I am grateful that not just the letter of the law, but the spirit of the law as it relates to the OEAA and CEAA, were upheld by DRIC, who refused to be swayed by the heavy handed tactics of Windsor's municipal leaders or local media. While acknowledging the City's efforts as "valuable

input" to their study, and indeed having incorporated many of their best ideas, the DRIC team also ensured that citizens outside the City were heard, and that the project would be directed by legislated policy and process, not the whims of Windsor leaders or their consultants.

The exhaustive work done for the natural heritage portion of the DRIC study is impressive and will be of long term benefit to the community. Having brought together all known sources of information about the nationally unique ecosystems in the vicinity and having done the inventories and field work in the ACA, the Natural Heritage Assessment is a significant addition to the scientific literature for the Ojibway Prairie Complex and surrounding areas. It will support the efforts of biologists, conservationists, ecologists and planners for years to come.

Incorporating an "ecosystem based" approach to environmental assessment in highway planning is a stated goal of the MTO, but to actually put it into practice is very challenging. I believe DRIC rose to this challenge fully.

Two important indicators of this ecosystem based approach bookend the WEP design process: avoiding protected natural areas in their Area of Continued Analysis (ACA Nov. 2005), and moving the last leg of the WEP away from unprotected (but significant) natural areas and into the median of EC Row Expressway (Oct 2008). From beginning to end DRIC weighed impacts to the sensitive and significant ecosystems along their route and sought to minimize them as much as possible.

My one recommendation as the study moves toward approval: Establish a legacy fund for the Ojibway Prairie Complex. Some small percentage of the budget for this project, as well as a percentage of tolls for the new crossing, should be dedicated in perpetuity to the protection and enhancement of the Ojibway Prairie Complex. Of vital importance: enhancing and protecting a connection of natural corridors from the waterfront to Ojibway. The natural areas of the Ojibway Complex, wether the provincial park, the city parks, ERCA governed ANSI's or unprotected buffer areas were found by DRIC to be locally, provincially, nationally and even globally significant. For an infrastructure project of this scope to occur adjacent to such a significant wilderness area, any "ecosystem based" approach demands a parallel conservation project of similar scope . This should not be a "possibly" or a "perhaps", but a core finding of the environmental assessment. Despite DRIC's strong efforts to be sensitive to the Ojibway Complex's ecosystem, the adjacency impacts of their project will be significant. An ecosystem based approach would see mitigations applied not only at the "micro" level (ie: roadway barriers, plant rescue) but also at a "macro" level: long term funding for enhancement and strategic expansion of Ojibway's natural areas to offset the impacts for those areas in proximity to the WEP, plaza or crossing.

Respectfully submitted,

[redacted]

"Ward, Roger (MTO)"
<Roger.A.Ward@ontario.ca>
12/12/2008 04:48 PM

To <Murray_Thompson@URSCorp.com>, <Jacquie_Dalton@URSCorp.com>
cc "Dave Wake" <Dave.Wake@ontario.ca>
bcc
Subject EAComment15_FW: Detroit River InBox - TAA FW: Concerns on DRIC plan

Draft EA Comments below

From: River, Detroit (MTO)
Sent: December 12, 2008 11:54 AM
To: Ward, Roger (MTO); Wake, Dave (MTO)
Subject: Detroit River InBox - TAA FW: Concerns on DRIC plan

From: [redacted] [mailto[redacted]
Sent: December 12, 2008 11:37 AM
To: River, Detroit (MTO)
Subject: Concerns on DRIC plan

Dear Mr. Roger Ward,

I'm sending you this message to express my concerns on the plan of DRIC developed recently. Despite many efforts to ease the public concerns on the impacts of the surrounding society, it still appears to me, strongly, that the studies was directional and biased on a pre-determined favorable plan, which may have significant societal consequence on safety, health, and environment.

As we all know, the plan has been proposed several years ago, and had been strongly opposed by local communicities, especially those residents living in surrounding areas. Should the plan go forward, these people will be the ones who are affected the most. So when we evaluate the social impacts, it would be fair to put these people's opinions with a larger weight factor than those who live 10 miles away, for example. Unfortunately, I don't think their voices are well heard, or at least, are not taken into account fairly enough. Some particular concerns were expressed about a local school, Oakwood elementary school (which was one of the best school in Essexx County and is now with decreasingly number of students, a symptom of people's concerns and leaving the area), a collage, and several local environment conserved parks. The new plan and assessment of environment contains very minimum, if not none, measures on those. Air condition itself won't tell a whole story, since there are other factors for traffic, such as material for construction, dust level, noise, temporary population impacts, etc. will all play critical roles to the local communities. An observation I have is the animal activities that have been impacted after 2001 due to the traffic pattern change. I would imagine the situation would become worst for animals, which there is nothing mentioned in the report.

As an experienced senior engineer and having been doing technical research for over 10 years, I understand very well how the scientific evaluation results can be interpreted in totally opposite ways to favor certain choices. And scientific approaches, unfortunately, will never solve the social problems along. Further, the report is every technical and in depth, requiring high-level

knowledge and education in this expertise to fully understand it, which prevents the local residents from comprehending its implications.

Another concern is the report covers only the evaluation of the existing plan. It seems like everything they are doing is simply finding evidences to support this plan, which is neither fair nor scientific sound. The assessment should at least provide more than one alternatives, if not all due to the financial constraints, and demonstrate their pros and cons to public.

With all above said, I would like to recommend a further evaluation involving local communities and further communications with local residents in general terms rather than such highly-scientific technical reports. Other alternatives and their assessments and comparisons on the impacts of all aspects should be included in the future hearing and review so that people can understand the choices and alternatives.

Sincerely,

[redacted]

"Ward, Roger (MTO)"
<Roger.A.Ward@ontario.ca>
12/12/2008 04:51 PM

To <Murray_Thompson@URSCorp.com>, <Jacquie_Dalton@URSCorp.com>, "Dave Wake" <Dave.Wake@ontario.ca>
cc
bcc
Subject EAComment16_FW: Detroit River InBox - TAA

More EA Comments from. [redacted]

From: River, Detroit (MTO)
Sent: December 10, 2008 2:00 PM
To: Wake, Dave (MTO); Ward, Roger (MTO)
Subject: Detroit River InBox - TAA

From: [redacted] [mailto[redacted]
Sent: December 10, 2008 1:54 PM
To: River, Detroit (MTO)
Cc: gkauffman@lgl.ca
Subject:

DRIC TEAM

Grant Kauffman

Additional comments form [redacted]

Have been trying all season to get a picture of one or more grey foxes in the area, but no luck. I have seen one at the Ambassador bridge area, McKee Park, Windmill Park, Russell and Mill St. In July 2007. Several other people have seen them and a couple have filed a report with NHIC. One of the Ojibway staff said he may have seen one, but not sure it wasn't a crossfox.

The one I saw with a friend who had seen it before, was very short and grey, seen at dusk. A local horse trainer reported one last DEC. 24 at Highway 18 and Morton. In mid July 2 delivery drivers reported seeing one at NEMAK.

Recently I saw one near the Ferry on a street that runs past ADM. Sunday at 5.00 p.m. Looked dark and very spooked, ran back and forth in the open, I thought it was a wild turkey, but no it was a fox.

Again I will have track to confirm this sighting.

Another person, a retired horse trainer says he sees them regular , very short grey foxes at the Windmill. Close to where he lives.

So my question is will the foxes have a clear passage to get from Turkey Creek (where historically the grey foxes were sighted in this region, by oldtimers) to the base of Ambassador bridge, where they seem to like to go??
Sincerely,

[redacted]

Corporation of the County of Essex
Office of the County Engineer

Thomas R. Bateman, P. Eng.
County Engineer

December 8, 2008

Ministry of Transportation
Windsor Border Initiatives Implementation Group
949 McDougall Avenue, Suite 200
WINDSOR, Ontario
N9A 1L9

ATTN: Roger Ward, Senior Project Manager

RE: Detroit River International Cross Study
Draft Environmental Assessment Report

Dear Roger:

We are pleased to see this extremely important project reach this milestone. The process has been comprehensive and responsive and we are pleased to provide comments on the Technically and Environmentally Preferred Alternative (TEPA) for the "End to End Solution" for the Detroit River International Crossing Study.

The County of Essex has been engaged in this undertaking from its inception and has diligently strived to be value added to the Study. We have worked through the Municipal Advisory Group and provided feedback and comments on numerous occasions.

We provided a series of comments upon the release of the Windsor Essex Parkway (WEP) in the Spring of 2008 in a letter dated June 9, 2008. We have not received a formal response to the items reviewed in our correspondence.

We have reviewed the TEPA as presented at the Public Information Open Houses held in late November against the June version of the WEP and our previous comments. We were encouraged and pleased to see the introduction of the full scale roundabout at Highway #3 and rationalization of the Pedestrian Bridge facilities.

Continued on Page 2

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(519) 776-6441 Ext. 316 Fax (519) 776-4455
E-mail: tbateman@countyofessex.on.ca

Several of the items remain outstanding and our concerns related to these issues continue to exist.

1) **Todd/Cabana Intersection:**

- the operations of this intersection can be improved with the introduction of dedicated connections to southbound Huron Church Line (County Road 7)

2) **Extension of Tunnel Sections:**

- the option to extend the length of each tunnel section to 240m should be explored to provide improved connections and provide more usable green space

- the Oakwood tunnel specifically would benefit from lengthening to better align the green space and connectivity of the Spring Garden ANSI to the Oakwood Bush

3) **Extension of Trail System:**

- extension of Trail system along Highway #3 to connect with the Chrysler Greenway entrance and parking area at County Road 11 (Walker Road) should be explored

- connecting to the existing Chrysler Greenway facilities provides a unique opportunity to build on benefits of both networks

We understand some dialogue on this subject has taken place with the Town of Tecumseh and the Essex Region Conservation Authority but are unaware of the outcome of those discussions.

4) **Northbound Exit at Labelle**

- the proposed northbound off ramp at Labelle should be reviewed

- the storage length available at this location is such that queuing of exiting traffic, particularly trucks, may encroach into the speed change lanes in the below grade sections

- depending on the traffic volumes expected, the introduction of a double lane ramp may be warranted

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Should the next steps of the project include the undertaking of a Design and Construction Report in advance of Detailed Design it may be possible to address these items in the Design and Construction Report. If the undertaking of the typical MTO DCR process is not envisioned we believe that the items could also be addressed in Detailed Design.

We appreciate the opportunity to once again comment on this project and look forward to reviewing these items further with the DRIC Team.

Yours truly,

T.R. Bateman

Thomas R. Bateman, P. Eng.,
County Engineer

TRB:gh

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"Ward, Roger (MTO)"
<Roger.A.Ward@ontario.ca>

15/12/2008 10:35 AM

To "Dave Wake" <Dave.Wake@ontario.ca>,
<Jacquie_Dalton@URSCorp.com>
cc <Murray_Thompson@URSCorp.com>,
<Kevin.Devos@ontario.ca>,
<Holly_Wright@URSCorp.com>,
<Patrick_Puccini@URSCorp.com>
bcc
Subject FW: comments submission regarding Ontario Environmental Assessment Report for DRIC project

More comments on Draft EA regarding traffic forecasts and Travel Demand.
Roger

From: [redacted] [mailto [redacted] **On Behalf Of** [redacted]
Sent: December 12, 2008 11:56 PM
To: River, Detroit (MTO)
Subject: comments submission regarding Ontario Environmental Assessment Report for DRIC project

To: Ontario Ministry of Transportatino
949 McDougall Avenue, Suite 200
Windsor, ON N9A, 1L9
Attention: Mr. Roger Ward, Senior Project Manager
Via: email to detroit.river@ontario.ca
Re: Detroit River International Crossing Study (DRIC)
Draft "Environmental Assessment Report: Individual Environmental Assessment (W.O. 04-33-002)", published November 2008 [referred to below as "Draft Ontario Report"]
Dear Mr. Ward:

I am a US citizen who resides in Southeast Michigan. Notwithstanding my non-Canadian status I respectfully request that you consider the comments offered below, inasmuch as the challenge the Draft Ontario Report addresses is a joint challenge to both the US and Canada and the solution to be selected is one that must be selected together by both nations and by the Province of Ontario and the State of Michigan.

I commented on the Michigan Department of Transportation (MDOT) DRIC Draft Environmental Impact Statement [referred to hereinafter as "Draft Michigan Report"] on 29 April 2008 (15 pages) and 29 May 2008 (5 pages). The attachment to this message is a copy of both sets of comments. They are forwarded for inclusion in the record of comments received by you on the Draft Ontario Report

The Draft Michigan Report relies on the same traffic data and forecasts used in the Draft Ontario Report. Most of my comments on the Draft Michigan Report are equally applicable to the Draft Ontario Report.

My major points are as follows:

(1) I find it disappointing and a major failure of both the Draft Michigan Report and the Draft Ontario Report that they did not consider a wider range of practical alternatives to a new highway crossing of the Detroit River. Note that Prime Minister Harper and President Bush in their joint DRIC statement issued on 21 August 2007 referred to "enhanced capacity", not "increased highway capacity" [ref: page 4 of my 29 April 2008 comments]

(2) The attention in the Draft Ontario Report to the option of placing either

truck trailers or entire tractor-trailer assemblies on railroad trains is inadequate, given that the September 2005 "Detroit River International Crossing Study Travel Demand Forecasts" report prepared by IBI Group [hereinafter referred to as "TDF"], states that ***"...the commercial vehicle traffic...potentially divertible to rail represents approximately 44% of the current total truck volumes on the Ambassador Bridge.*** " [ref: TDF page 122, where it also is stated that "potentially divertible" truck traffic is that traffic moving across the Detroit River with one trip end in or beyond the Greater Toronto Area and the other trip end in or beyond Detroit].

Given your data, it appears that during year 2035 the average hourly truck traffic crossing the Detroit River with one trip end in or beyond the Greater Toronto Area will be approximately 200 movements per direction. That traffic volume would fill one intermodal train leaving each end of the route every 30 minutes. [ref: Section 13 on page 4 of my 29 May 2008 comments]

(3) Canada is a signator of the Kyoto Protocol on Climate Change. The Draft Ontario Report totally ignores the vast reduction (perhaps 90%) in freight traffic fuel consumption and emissions on the Detroit-Toronto route that result from substituting intermodal rail service for trucks on highways. See Section 13 on page 4 of my 29 May 2008 remarks to MDOT for more detail.

(4) Totally ignored in the Draft Ontario Report is the prospect that the increased truck traffic resulting from building the DRIC highway project in lieu of improving railroad service is the fact that the former may very well necessitate widening Highway 401 the entire distance between Windsor and Toronto. Recall from (2) above my reference to the Detroit-Toronto truck traffic in year 2035 being an average of 200 vehicles per hour per direction. Peaking of truck traffic may result in the peak hour truck traffic on Highway 401 being 600 vehicles per direction. The Draft Michigan Report states that one truck takes up as much highway capacity as three automobiles. Thus 600 trucks per hour is the equivalent of approximately 1,800 automobiles per hour, which effectively accounts for the maximum automobile traffic that a highway lane can accommodate per hour.

(5) Much of the peak hour passenger car traffic between Detroit and Windsor is local commuter traffic. See Section 14 in my 29 April 2008 comments and also in my 29 May 2008 comments. A reasonable alternative to a new highway bridge would be the implementation of new public transport service across the Detroit River. One way to implement improved trans-border public transportation service would be to develop a light rail system in Windsor to complement Detroit's planned Woodward Avenue light rail system and to then join the two in a tunnel under the Detroit River.

(6) See my 29 April 2008 and 29 May 2008 letters for additional comments on the Draft Michigan Report that apply equally to the Draft Ontario Report.

(7) Last, the proposed DRIC highway project involves a total cost of at least $3 billion and perhaps $5 billion. Those sums very likely far surpass the implementation costs of an intermodal rail service and/or a dedicated public transportation service crossing under the Detroit River to serve the residents of Windsor and Detroit,

Respectfully,

[redacted]

--
[redacted]

[redacted]

telephone: [redacted] 2008.0429+2008.0529DRIC.DEIS.comments.pdf

[redacted]

29 April 2008

Mr. Robert Parsons, Public Involvement/Hearing Officer
Michigan Department of Transportation
PO Box 30050
Lansing, MI 48909 USA
parsonsb@michigan.gov

RE: Detoit River International Crossing (DRIC), Wayne County, Michigan "Draft Environmental Impact Statement and Draft Section 4(f) Evaluation" -- approved by Federal Highway Administration on 15 February 2008

Dear Mr. Parsons:

This letter consists of comments submitted for the record regarding the Draft Environmental Impact Statement identified above.

1. Abbreviations and their Definitions

For convenience, several abbreviations are used through the text of this letter. Facility name abbreviations are as follows:

AMB	the Ambassador Bridge, which is a privately-owned four-lane highway between Detroit and Windsor that opened for traffic in 1929
BWB	the Blue Water Bridge, which is a pair of two adjoining three-lane highway bridges over the St. Clair River between Port Huron, Michigan and Point Edward and Sarnia, Ontario, and which is owned by the governments of Michigan and Ontario. [The older of the two spans was opened for traffic in 1938. The newer of the two spans was opened for traffic in 1997.]
DRT	the Detroit River Tunnel, which is a two-tube railroad tunnel (one railroad track per tube), which opened for railroad traffic in 1909, and which is owned by the Detroit River Tunnel Company (a Michigan corporation)
DWT	Detroit-Windsor Tunnel, which is a two-lane highway tunnel between Detroit and Windsor that opened for traffic in 1930 and that is owned jointly by the Cities of Detroit and Windsor

Abbreviations for organization names, report titles, and other terminology are as follows:

CEQ	Council on Environmental Quality, a unit of the Office of the President of the United States
DEIS	the Draft Environmental Impact Statement identified immediately before the salutation above
SEMCOG	the "Southeast Michigan Council of Governments", which is a regional planning organization whose planning jurisdiction consists of the following Michigan counties (listed in declining order of population): Wayne (which includes the City of Detroit), Oakland, Macomb, Washtenaw, Livingston, St. Clair, and Monroe
Local traffic	motor vehicle traffic which has both its origin and destination within the area consisting of Essex County in Ontario and all SEMCOG counties, except for St. Clair County
Long distance traffic	motor vehicle traffic which is not "Local traffic" as defined above
Borealis	Borealis Transportation Infrastructure Trust, a Canadian entity which is controlled by the Ontario Municipal Employees Retirement System and which in 2001 purchased from the Canadian National Railroad that railroad's 50 percent interest in the Detroit River Tunnel Company
DRTP	the Detroit River Tunnel Partnership, which appears to be an assumed name for the Detroit River Tunnel Company and which reportedly is co-owned by Borealis and the Canadian Pacific Railway
DIBC	Detroit International Bridge Company, the private organization that owns AMB
DCTC	Detroit & Canada Tunnel Corporation, the entity which is under contract to operate the DWT on behalf of DWT's owners
TDF	a working paper report entitled "Detroit River International Crossing Study Travel Demand Forecasts", prepared September 2005 by IBI Group http://www.partnershipborderstudy.com/pdf/TTRexisting&future2005-09-15.pdf
PCEs	"Passenger car equivalents", which is calculated in the DEIS by determining the sum of the following for a specific period of time (e.g., an hour, a day or a year): the observed or predicted passenger car vehicle traffic volume and 3 times the observed or predicted commercial vehicle traffic volume [For example, if during any given hour the traffic flow consists of 100 automobiles and 50 commercial vehicles, the PCE value for that hour is 250.]

2. Introduction

The DEIS is a very detailed review of several highway options for building a new truck/automobile bridge over the Detroit River at locations between the existing Ambassador Bridge and the southern tip of Grosse Ile Township, Michigan, as viewed from the US side of the border.

However, the viewpoint expressed immediately above should not be interpreted to imply that the DEIS complies with CEQ requirements for an Environmental Impact Statement as set forth in 40 CFR 1502. [ref: http://ecfr.gpoaccess.gov]

The balance of this letter provides elaboration on some of the ways the DEIS should be modified in order to properly respond to CEQ regulations.

3. Context of the DEIS

The context of this DEIS is twofold. First there is an overriding policy context. In addition there is a factual context.

3a. Policy Context:

There are at least three dimensions within the policy context: CEQ requirements; the President's agreement with the Prime Minister of Canada as stated on 21 August 2007; and the US government requirement that any new international border crossing requires a Presidential Permit before it can be constructed.

The first of the three dimensions in the policy context, the CEQ requirements result from the mandate set by Congress in establishing the CEQ. The origin and responsibilities of the CEQ are perhaps best described by quoting from the CEQ website, http://www.whitehouse.gov/ceq/aboutceq.html

Congress established CEQ within the Executive Office of the President as part of the National Environmental Policy Act of 1969 (NEPA). Additional responsibilities were provided by the Environmental Quality Improvement Act of 1970.

In enacting NEPA, Congress recognized that nearly all federal activities affect the environment in some way and mandated that before federal agencies make decisions, they must consider the effects of their actions on the quality of the human environment. NEPA assigns CEQ the task of ensuring that federal agencies meet their obligations under the Act. The challenge of harmonizing our economic, environmental and social aspirations has put NEPA at the forefront of our nation's efforts to protect the environment.

Some of the essential provisions of the CEQ requirements for an environmental impact statement establishing the policy context for preparation of the document are as follows:

40 CFR 1502.1: ***...an environmental impact statement...shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.***

40 CFR 1502.2(a): ***Environmental impact statements shall be analytic, rather than encyclopedic.***

40 CFR 1502.2(g): ***Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.***

40 CFR 1502.14: ***...agencies shall...(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.***

40 CFR 1502.14: ***...agencies shall...(c) Include reasonable alternatives not within the jurisdiction of the lead agency.***

40 CFR 1502.9: ***If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion.***

40 CFR 1502.9: ***The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action.***

The second aspect of the policy context is the President's 21 August 2007 statement. The relevant parts of that statement are reproduced immediately below. Note that the statement does not commit the US and Canadian governments to any particular mode of transportation. Also, note that the statement does not commit the government to any specific type of action for "enhanced capacity", such as building a new crossing in lieu of enhancing border processing procedures. Presumably the Michigan Department of Transportation's $230,000,000 Ambassador Bridge Gateway Project which began during February 2008 qualifies as a "development of enhanced capacity" anticipated in the 21 August 2007 Joint Statement.

THE WHITE HOUSE
PRESIDENT
GEORGE W. BUSH

For Immediate Release
Office of the Press Secretary
August 21, 2007

Joint Statement by Prime Minister Harper, President Bush, and President Calderón
Montebello, Quebec, Canada

...

Smart and Secure Borders

Our three countries have a long history of cooperative border management, predicated on the understanding that our prosperity and security depend on borders that operate efficiently and effectively under all circumstances....

We ask ministers to continue to pursue measures to facilitate the safe and secure movement of trade and travellers across our borders and, in particular, to:

- ...
- 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 third and final aspect of the policy context is that if any "development of enhanced capacity" of the border crossing infrastructure involves the construction of a new bridge or tunnel across

the border, then a Presidential Permit is required. The US Department of State processes applications for Presidential Permits for new bridge and tunnel crossings. A summary of the procedure for obtaining the permit is presented on a US Department of State webpage, http://www.state.gov/p/wha/rls/fs/7895.htm .

Environmental reviews prepared pursuant to the CEQ requirements are an integral part of the approval process for a Presidential Permit. Thus it appears reasonable that the DEIS should help the President to decide the type and timing of any new transborder infrastructure installation.

3b. Factual context:

The factual context of the DEIS is that regrettably it is but one of three environmental statements which have been, are, or will be prepared for three proposed international crossing projects.

The second environmental statement is an Environmental Assessment dated April 2007 which the DIBC submitted to the US Coast Guard with regard to its proposal for a second suspension span to be located immediately downstream of AMB. That document is available for review at http://www.ambassadorbridge.com/drafts/_Draft_Environmental_Assessment.pdf

The third is a forthcoming environmental statement for a DRTP proposal to replace the existing two-track DRT with a one-track railroad tunnel with a cross-sectional dimensions greater than those of each of the two existing railroad capable of accommodating a large auto carrier railroad freight car referred to as an "Auto-Max" railcar and railroad freight cars that carry double stacks of larger containers. [Most auto carrier and many double-stack container railroad freight cars already are small enough to pass through the DRT.] DRTP's intention regarding the existing tunnel is stated by one of DRTP's two owners to include conversion of the existing tunnel to a truck-only highway. [See Section 4, below.]

Presumably an environmental statement will be required for each of the three Detroit River crossing proposals by the Canadian government in addition to the environmental statements required by the US Federal Highway Administration. Thus, a total of six environmental statements will have been prepared before the President and the Canada's Prime Minister make a decision as to which, if any, of the competing proposals will be implemented.

Unfortunately there simply is no way that the DEIS as it is constructed at this time can address the totality of environmental impacts of the three separate proposals. What is needed is for the US Secretary of Transportation and the Canadian Minister of Transport to jointly retain a qualified and impartial environmental impact evaluator who has no business relationship with any of the businesses and the Michigan and Ontario highway agencies involved in the competing proposals, in order to avoid the impression that the author of the environmental document is advocating a business or bureaucratic interest rather than the welfare of the public residing on both sides of the border.

In conclusion, the DEIS needs to be redone by the Office of the US Secretary of Transportation rather than by the Federal Highway Administration or another modal administration in order to objectively satisfy the CEQ requirements for a DEIS.

4. The DEIS needs clarification as to what the DRTP proposes to do

The DRTP proposal as of approximately 2005 included a provision to convert the existing two-track DRT to a truck-only highway. The DEIS working paper entitled "Indirect and Cumulative Impact Analysis Technical Report" states in a footnote on page 4-68 [pdf p. 139] that ***"The DRTP Truck-only Tunnel proposal has been withdrawn by the proponents."*** Notwithstanding that statement, as of the morning of 28 April 2008 a Borealis webpage, http://www.borealisinfrastructure.com/assets/transportation.aspx , stated the following:

Detroit River Rail Tunnel: OMERS jointly owns with Canadian Pacific Railway the 8,5OO-foot Detroit River Tunnel that links Windsor and Detroit. More than $130 billion of goods flow annually through this cross-border asset. This trade is expected to triple in the next five years. Additionally, a $600 million new rail tunnel and high-speed truck route are proposed for completion within five years to assure shippers fast and competitive routing on North America's busiest free-trade corridor. For more information, please visit www.thejobstunnel.com.

The www.thejobstunnel.com webpage reads "under construction".

Notwithstanding the assertion in the above-referenced DEIS working paper that the project sponsor has withdrawn the truck-only tunnel, the DEIS at page 3-191 refers to "***...the construction of the Detroit River Tunnel Partnership proposed truck-only tunnel***" and states that it would not "***...measurably diminish the traffic on the proposed DRIC crossing...***" and that it is not "***...associated with a program to enhance the community which hosts the crossing.***"

During February 2008 DRTP requested that a replacement rail tunnel be added to the SEMCOG Regional Transportation Plan for 2030. The project listing has no information regarding the number of tracks in the replacement tunnel, although informal presentations indicate that the replacement tunnel will contain only one track. In addition, no information is provided in the SEMCOG Regional Transportation Plan project listing about the future use or disposition of the existing tunnel. The primary information in the SEMCOG project listing is that the total cost for the part of the project on the US side of the border will be $172,785,000, that the entire cost will be privately provided, and that the time period for the expenditure is "2006-2010". [ref: http://www.semcog.org/Data/Apps/project.report.cfm?type=RTP&id=4425]

The problem described above can be cured if both of the two co-owners of the DRT submit for inclusion in the DEIS record a written statement clarifying their intentions regarding the disposition or alternate use of the existing two tubes comprising the existing DRT once the new one-track tunnel is constructed.

5. Rationale for Considering the BWB in the DEIS

The BWB is located approximately 60 miles from the AMB and the DWT. It is over the St. Clair River rather than the Detroit River. Nonetheless it is essentially a local international crossing between Detroit and Canada.

If one uses www.mapquest.com to check the driving distance between the Detroit City Hall (which is located at 2 Woodward Avenue, only three short blocks from the Detroit entrance to

the DWT) and the Toronto city hall (located at 100 Queen Street West), one finds that the shortest route between the two city halls is via the DWT and Ontario Route 401. However if one makes the trip between the Detroit and Toronto city halls via the BWB and Ontario Route 402 to the point where that route intersects with Ontario Route 401 just west of London, one finds that the total travel distance is only 12.5 miles greater than the route using DWT [i.e., 243.6 miles vs. 231.06 miles]

Effectively there are places within the city limits of Detroit from which travel to London and Toronto involves a shorter trip distance and probably a shorter trip time than travel via either the DWT or the AMB.

This relevance in travel demand forecasting of the above-described geographical fact is discussed in greater detail on TDF pages 56-58 [pdf pp. 65-67]. With the exception of discussion and tables presented on DEIS pages 2-9 through 2-11, the local significance of the BWB for travel from Detroit to London and Toronto is not discussed in the DEIS.

The DEIS should be modified to conspicuously indicate that one reasonable alternative to building new bridges over the Detroit River at this time is to route more traffic over the BWB as long as the BWB has the ability to absorb more traffic. The authors of the TDF address that option in a sensitivity analysis summarized in Section 6.2.3 on page 124 [pdf p.133] of that report.

6. Existing and Projected Traffic on Detroit River Highway Crossings

The DEIS states on page 1-9 that as of 2004 the combined weekday traffic volume on the existing Detroit River border crossings, i.e., AMB+DWT, was as follows:

Automobile:	Total traffic	35,850
	Local traffic	28,450 (79% of total auto traffic)
Truck traffic:	Total traffic	13,000
	Long distance traffic:	6,500 (50% of total truck traffic)

On page 1-10 the DEIS states that the hourly combined capacity of AMB and DWT is 5,000 passenger car equivalents (PCEs) per hour, for which each truck is counted as three automobiles. The TDF explains [on pdf page #s 103 and 104] that the 5,000 PCE capacity estimate is for each direction of travel and that it is calculated by assuming the AMB and DWT capacities are 1,750 PCEs/lane and 1,500 PCEs/lane respectively. Because AMB has two lanes per direction of traffic and DWT has only one lane per direction of traffic, the total capacity for the two facilities combined is 5,000 PCEs/direction/hour.

The DEIS also states, on page 1-10, that the total traffic on AMB+DWT will reach the 5,000 PCE/hour capacity sometime between 2015 and 2035.

Although the TDF on page 55 [pdf p. 64] specifies the border crossing fees (apparently as of 2005) for ABM, DWT, and BWB, there appears to be no information in any of the DEIS documentation regarding the assumptions in the travel demand forecasting process of the border crossing fees for the years for which the traffic forecasts have been made.

Also, it appears from the DEIS that no consideration in the traffic forecasting was given to differential tolls based on any of the following options, which have been implemented in other major metropolitan areas, for example, the Golden Gate Bridge in San Francisco, CA [ref: http://goldengatebridge.org/tolls_traffic/toll_rates_carpools.php]:

- Time-of-day variation in bridge/tunnel tolls to discourage travel during peak hours
- Lower tolls for vehicles equipped for electronic toll collection
- Lower tolls for a high-occupancy vehicle (i.e., an automobile or SUV with more than one or two persons in it)

A review of the web sites for the AMB, DWT, and BWB indicates that as of 28 April 2008 the toll differs depending on which direction the facility user is traveling for at least DWT and BWB. It also indicates that a discount is given by the operators of all three facilities for the purchase of commuter tokens or tickets. In other words, the facility usage fee policy of each facility operator gives discounts to travelers who tend to travel at peak travel times, a policy that runs counter to the view that transportation facility users who contribute to congestion should pay a greater fee than those who travel at times of no congestion.

Given the absence in the DEIS of an analysis of the sensitivity of peak period travel forecasts to increases in facility user fees during peak travel hours or to user fee decreases during off-peak travel hours, it is not possible to determine how realistic the peak hour travel forecasts contained in the DEIS and its supporting documentation are.

The DEIS should be amended to clarify the traffic forecasting assumptions and to quantitatively evaluate at least the fare policy options identified above.

7. Change in Forecast Base Year from 2004 to 2007 and Revision of Forecast for 2034

The travel demand forecasts presented in the DEIS and the TDF use 2004 as a base year. We now have three more years of data and the DEIS should be amended to establish 2007 as the base year.

Traffic volumes on at least the BWB declined considerably between the end of 2004 and the end of 2007.

The declines in traffic volumes for the BWB have been…
from 3,760,000 in 2004 to 3,423,000 in 2007 for automobiles, and
from 1,800,000 in 2004 to 1,623,000 in 2007 for commercial vehicles.

Presumably similar declines in AMB and DWT traffic volumes also have taken place.

The TDF report presents estimates of the compound annual growth rates (CAGR) in traffic volumes across AMB, DWT, and BWB taken together for the period 2004 to 2015. Exhibit 5-7 on page 83 [pdf p.92] estimates the CAGR for automobile traffic to be 2.9%. Exhibit 5-18 on page 95 [pdf p. 104]indicates that the CAGR for commercial vehicle traffic to be 3.3%. Doing the math leads to the conclusion that the actual BWB auto and commercial vehicle traffic volumes during 2007 were respectively 23% and 25% less than what was forecasted for 2007.

The DEIS should be modified to present the traffic counts for the AMB, DWT, BWB and amend the forecast for the planning horizon year, 2034.

8. Modification of Forecasts to Reflect Changes in Fuel Prices Since 2004

The Energy Information Administration (EIA) maintains statistics at www.eia.doe.gov regarding gasoline and diesel fuel prices for various locations around the country.

EIA statistics for the US "Midwest (PADD-2)" show that the prices per gallon, including taxes, for "Gasoline All Grades – Conventional Areas" and "Diesel (On-Highway) – All Types" were as follows:

Date	Gasoline	Diesel
Average for 2004	$1.831	$1.770
Average for April 2008	$3.434	$4.040

The increases in gasoline and diesel fuel prices are extraordinary, being 88% and 128% respectively.

Because significant fuel price changes have an impact on travel demand the travel demand forecasts contained in the DEIS should be redone. In addition, the changes in fuel prices since 2004 give impetus to identify within an amendment to the DEIS the improvement of intermodal freight services as a reasonable alternative to constructing a new highway crossing of the Detroit River.

9. Evaluation of Peak Period Travel for AMB, DWT, and BWB as a Group during 2034

Assumptions regarding the tendency for traffic to move all at once are critical in reaching conclusions regarding the need for additional highway capacity between Detroit and Canada.

Figure 1-3 on page 1-10 of the DEIS illustrates that the peak hourly PCE traffic during 2004 was approximately **3,300 PCE**s.

TDF devotes an entire section entitled "Temporal Patterns of Vehicular Travel" (Section 3.6 on pages 43 to 51 [pdf pp. 52-60]) to observed peak period travel patterns in years 2000 and 2004.

Exhibit 5-23 on ETF page 101 [pdf p.110] states that the traffic volumes were as follows:

AMB + DWT:	11,950,000 passenger cars
	3,530,000 commercial vehicles

Applying the relationship between traffic volume and PCE's as established in the DEIS and repeated above, one may conclude that during 2004 the total PCE's for AMB+DWT was **22,540,000.**

Exhibit 5-23 on ETF page 101 [pdf p. 110] also includes travel demand forecasts for year 2035. Those forecasts are as follows:

AMB + DWT:	18,740,000 passenger cars
	8,060,000 commercial vehicles
BWB:	5,910,000 passenger cars
	4,290,000 commercial vehicles

If one applies the procedure specified in the DEIS for calculating PCEs, one finds that the 2034 forecasts summarized above imply that the total PCE's during that year is forecasted to be **61,700,000** [i.e., 18,740,000 + 3(8,060,000) + 5,910,000 + 3(4,290,000)].

As noted above during 2004 we had 3,300 peak hour PCEs for a total AMB+DWT traffic that year of 22,540,000 PCEs. The ratio between annual PCEs and peak hour PCEs that year was therefore **6,830**.

The DEIS and its supporting documentation do not specify the ratio between annual PCEs and peak hour PCEs for year 2034 for AMB, DWT, and BWB taken together. However, as a preliminary assumption we can assume that the ratio will be same in 2034 as it was 2004, i.e., **6,830**. Doing that leads us to conclude that the peak hour PCEs in 2034 will be **9,034** (i.e., 61,700,000 divided by 6,830).

As noted above, the combined capacity of AMB and DWT is 5,000 peak hour PCEs per direction. Assuming that each lane of BWB has the same capacity as each lane of AMB, i.e., 1,750 PCEs per hour, the three lanes per direction at BWB add a total of 5,250 peak hour PCEs per direction of travel, giving us a combined capacity of 10,250 peak hour PCEs.

For AMB, DWT, and BWB taken together, the year 2034 peak hour PCEs projection derived above [i.e., 9,034 PCEs] is slightly less than 90% of the available capacity in place at this time, a result which suggests the need for providing more highway capacity across the Detroit River is not as urgent as is suggested in Figure S-2 on page ES-2 of the DEIS.

The DEIS should be revised to explicitly state how the peak period PCE statistic was derived from the year 2034 travel demand forecast and the justification for the procedure that was adopted.

10. Sensitivity of Peak Hour Travel Demand to Changes in Assumptions Made in Its Calculation; Peak Period Travel Disincentives; Evaluation of Reversible Lanes

Figure S-2 in the DEIS, prominently shown on page ES-2, indicates that the hourly PCE during 2004 was approximately 3,300. The temporal pattern of vehicular travel is addressed in the TDF on pages 43 through 51 [pdf pp. 52-60]. The TDF on page 51 [pdf p.60], lines 9-11, states that "***the change in travel characteristics between 2000 and 2004 indicates a change in the peak hour from a Summer afternoon weekday to a Fall afternoon weekday, although the differences are not large.***" [p 51 [pdf p.60], lines 9-11] PCEs.

Figure S-2 also shows that the hourly "Base Forecast Volume" will be 6,000 PSEs in year 2034.

However, neither the DEIS nor the TDF contains an analysis of the sensitivity of the hourly PCE for 2034 to changes in assumptions made in the calculations. The DEIS should be amended to address this issue.

As indicated in Section 6 above, it is possible to provide incentives to travel at times other than peak periods. The DEIS also should be amended to address the sensitivity of the peak hour travel forecasts to the implementation of various peak period travel disincentives.

Lastly, it appears from the discussion on TDF pages 43 through 51 [pdf pp.52-60] that between now and 2034 there will be a date beyond which the directional imbalance in traffic flow will be sufficiently large to make feasible the operation of lanes on which the permitted traffic flow is reversible depending usually on the time of day and day of week. For example, if an existing or new highway crossing the Detroit River has four lanes, at some times of day three of the lanes could be used for one direction of travel and the remaining one lane could be used for vehicles traveling in the opposite direction. BWB already has six travel lanes. For BWB normally three lanes are available for each direction of travel. However, during periods of imbalanced peak traffic flow the arrangement could be changed to provide four lanes for the peak flow direction. The DEIS should be amended to define and evaluate this option to avoid providing more capacity than is required.

11. Michigan – Upstate New York Origin-Destination Statistics and Projections

Many Michigan motorists traveling to Upstate New York and New England travel across Canada because the travel time to do that is shorter than to drive into Ohio and then along the south shoreline of Lake Erie. The DEIS includes no information about US traffic using Ontario as a short-cut to avoid driving around Lake Erie. The absence of that data makes it impossible to ascertain whether there is a practical alternative for accommodating such traffic that does not require adding capacity to the international crossings in metro Detroit.

The DEIS requires amendment to clearly present both existing and forecasted travel volumes between Detroit and Upstate New York that uses travel through Ontario as a short cut.

12. US-Canada Travel Origin-Destination Statistics and Projections

The Michigan Department of Transportation, the agency apparently managing the preparation of the DEIS on behalf of the Federal Highway Administration, has not included, either within the DEIS document or in any of the supporting documents, any travel origin-destination data for either "local traffic" or "long distance traffic" between the US and Canada. SEMCOG officials have referred my inquiry for "long distance traffic" data to the Ontario Ministry of Transport.. I advised the Michigan Department of Transportation of that referral and was not offered a local source for the data. I then contacted the Ontario Ministry of Transport which in turn advised that the data available at this time are only from a 1999 survey. The Ontario Ministry of Transport also stated that it has statistics as the result of a 2005 survey done in cooperation with US Federal Highway Administration and Transport Canada, but that it cannot yet share the data until a pending data sharing agreement is executed by the parties.

I have requested the 1999 data but have not yet received them. I therefore request from you an opportunity to supplement these comments after I receive and review the 1999 data. I also

request an opportunity to supplement these comments a second time, after receiving and reviewing the 2005 data.

Given the non-availability of the 2005 data, and given that practical alternatives to the DRIC project can not be evaluated without such data, it is imperative that the DEIS be amended to include the 2005 origin-destination information and then released to the public for additional comment.

13. Intermodal Rail Diversion of Truck Traffic

The TDF on pages 122 and 123 [pdf pp.131-132] addresses the possibility that intermodal rail services could divert a significant amount of truck traffic.

The topic takes up only about 1.2 pages of text and one exhibit.

Perhaps the most notable point included in the discussion is the statement that "***the commercial vehicle traffic...potentially divertible to rail represents approximately 44% of the current total truck volumes on the Ambassador Bridge***."

The TDF on page 101 [pdf p.110] states that during 2004 a total of 3,370,000 commercial vehicles traveled over AMB. That statistic implies an average truck traffic volume between Detroit and Toronto of over 4,000 per day (both directions combined) or 2,000 per direction per day.

There already are intermodal rail services between southeast Michigan and southern Ontario. Apparently no public funds have been allocated to assist the railroads involved in those services to further develop and to expand the services.

One intermodal service, CP's Expressway, was established approximately in 2000. The TDF on page 122 [pdf p.131] incorrectly states the following about intermodal rail services in general as the result of the termination of that service: "***The potential is also brought into question given the recent cancellation of the CP Xpressway intermodal rail service in 2004***."

The reason the sentence quoted in the immediately preceding sentence is incorrect is that, according to a Canadian Pacific spokesman on 29 April 2008, the CP Expressway service continues to operate between Montreal and Toronto. The CP merely truncated the western portion of the service. It is not clear whether the truncation of the route was due to a need to reallocate scarce resources to the Montreal-Toronto segment because of great demand there, or if the incremental revenues from operating the service between Toronto and Detroit did not exceed the incremental costs of operating that segment.

Railway Age Magazine's January 2003 issue carried an article about the CP Rail Expressway service, and in that article stated that CP invested $50,000,000 in equipment to start up the service, which operated between Detroit, Toronto, and Montreal Given that the DEIS suggests that $2.5 to $3.0 billion would be invested to complete a new highway crossing over the Detroit River, it appears inappropriate to deem questionable an intermodal service that requires an

investment of less than two percent of the investment required for a new Detroit River highway crossing without examining ways to make such a service successful.

A second intermodal service between metropolitan Detroit and Toronto is operated by Triple Crown Service, a subsidiary of Norfolk Southern Railway. That service has been operating for many years, involves one train run per direction on each of five days per week, and for each train run takes approximately 80 to 100 trucks off not only the international highway crossing that otherwise would be used, but also the freeway between the border and Toronto. Air pollution emissions from the locomotive drawing the train reportedly are not more than 25% of the air pollution emissions that would be emitted by the highway tractors that otherwise would operate between Michigan and the terminal in Toronto.

There have been and continue to be other intermodal services between Toronto and Michigan.

In any event, given the statement quoted above that 44% of the truck traffic crossing AMB as of 2004 is potentially divertible to rail, and given the fact that 40 CFR 1502.1 requires that ***"...an environmental impact statement...shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment***", it is imperative that the intermodal rail option be addressed, even though the rail intermodal service alternative is not within the jurisdiction of the lead agency in this case [ref: 40 CFR 1502.14]

14. Public Transportation Options

In Section 6, which is on page 7 of this letter, the magnitudes of weekday "Local traffic" and "Long distance traffic" are presented for automobile and truck traffic on AMB+DWT combined. The data there shows that automobile traffic that is "local traffic" accounted for 38% of the total daily PCEs. Probably "local traffic" accounted for by automobiles during the daily peak travel hour accounts for an even greater percentage of the peak travel hour PCEs accounted for by trucks and autos.

Given the fact that the State of Michigan and the Province of Ontario are considering what is essentially a $2.5 to $3.0 billion investment in a new highway crossing of the border, it appears that a reasonable alternative to the highway investment option could be an international public transportation service that would attract the automobile "local traffic" which now impedes the operation of trucks on AMB.

One option is to extend the planned Woodward Avenue light rail line southward to Oullette Avenue in Windsor, and then out Oullette and perhaps out two or three branches from Oullette. Such an extension probably could be done for a cost much less than the estimated cost of the proposed highway bridge structure over the Detroit River. The option therefore is a reasonable alternative and, according to CEQ requirements, needs to be the topic of detailed evaluation in the DEIS.

The evaluation envisioned would require for both 2004 and 2034 daily and peak-hour origin-destination data for trans-border automobile travel. It also would require the definition of a public transportation service on both sides of the border and the estimation of how much of the automobile travel could be diverted to the public transportation mode.

The DEIS therefore should be amended to do the requisite analysis of the public transportation alternative. If the origin-destination data do not exist, they will have to be developed in order to analyze the alternative.

15. Low-Cost Reasonable Alternatives

There are a number of options that do not involve the expenditure of millions or billions of dollars in order to achieve what President Bush, Prime Minister Harper, and President Calderon described on 21 August 2007 as "...the development of enhanced capacity of the border crossing infrastructure in the Detroit-Windsor region".

15a. Pricing Policies:

Already discussed above are several bridge and tunnel pricing policies that provide incentives to travel either before or after the facilities' peak travel hours and/or to travel in high-occupancy vehicles such as car pools or van pools.

Another pricing policy that could alleviate congestion is, at the time of the next fare increase, is to defer increasing the facility use fee for those who acquire NEXUS identification documents and therefore are eligible for expedited customs and immigration processing on each side of the border.

One of the most unfortunate pricing policies in effect at this time is the policy of selling commuter tickets at reduced prices and not requiring that the reduced-price tickets be used only during off peak hours.

15b. Marketing of the Blue Water Bridge:

A second option is to entice the drivers of trucks and autos to use the BWB instead of AMB or DWT. On page 124 [pdf p.133] of the TDF, in a section entitled "High Diversion to St. Clair River Crossing Scenario", the authors of the TDF state that there is a bias among travelers to use either AMB or DWT instead of the BWB, when all other factors are equal. The authors of the TDF go on to assert that if that bias were removed the need for additional Detroit River crossings would be deferred by six years.

Most likely trans-border travelers between Michigan and London and points east of London are not aware that the total trip length increases by approximately 12 miles when one end of the trip is in Detroit at the entrance to AMB or DWT and the other end of the trip is in London or east of London, and when the travel between the two locations is via BWB instead of via AMB or DWT.

A public education program is appropriate in order to effect a reduction in congestion at AMB and DWT. This can consist of one or more of at least of the following:

- Distribution (perhaps at Michigan and Ontario travel centers) of BWB brochures which announce the absence of a major travel time disadvantage for cross-border travelers destined to metro Detroit and to London and places east of London

- In Michigan, static signs along northbound I75 at points south of I75 milepost 45 (approximately) and also along eastbound I94, I96, and I69, to announce the advantages of using BWB rather than other crossings.

- In Ontario, static signs located along westbound Highway 401, east of the Highway 402 interchange, to announce the advantages of using BWB to travel to Detroit

- Variable message signs installed in advance of route choice decision points, rest stops, and service centers to announce, for each of the existing border crossings, the estimated time to travel from the sign's location to downtown Detroit and/or other major destinations and whether that time estimate is expected to increase or decrease during the next hour or two. [Having the information before reaching the border could entice travelers to stop and rest or eat before reaching the border if delays at the border will diminish during the rest stop.]

15c Set up reversible lane programs:

If not already done, establish a reversible lane program for BWB and possibly AMB to take advantage of a major imbalance in directional traffic flows. This program could even extend to DWT during the hours immediately before and after major events in downtown Detroit. If necessary, during this occasions use of the DWT could be limited to individuals with NEXUS identification.

16. DEIS Technical Reports

The "Foreword" to the DEIS lists a number of technical reports as being included in the documentary record of the DEIS. Not included in that list is the TDF report which is identified on page 2 of this letter and which is referenced in DEIS Figures S-2 and 1-3. The record of working documents that are a part of the DEIS should be amended to include the TDF report.

Respectfully submitted,

[redacted]

[redacted]

[redacted]

29 May 2008

Mr. Robert Parsons, Public Involvement/Hearing Officer
Michigan Department of Transportation
PO Box 30050
Lansing, MI 48909 USA
parsonsb@michigan.gov

RE: Detoit River International Crossing (DRIC), Wayne County, Michigan "Draft Environmental Impact Statement and Draft Section 4(f) Evaluation" -- approved by Federal Highway Administration on 15 February 2008

Dear Mr. Parsons:

My letter dated 29 April 2008 consists of comments submitted for the record regarding the Draft Environmental Impact Statement (DEIS) identified above. This letter does not replace my 29 April 2008 letter. Rather, this letter serves as an addendum to my 29 April 2008 letter and the comments that follow therefore also are submitted for the DRIC DEIS record. Accordingly, please append this letter to my 29 April 2008 letter.

1. Abbreviations and their Definitions

The abbreviations used in this letter are identical to those used in my 29 April 2008 letter.

2. Introduction

Please refer to this section in my 29 April 2008 letter.

3. Context of the DEIS

Please refer to this section in my 29 April 2008 letter.

4. The DEIS needs clarification as to what the DRTP proposes to do

The Borealis webpage identified in Section 4 of my 29 April 2008 letter continues to be an active webpage.

In addition, the DRTP webpage providing answers to frequently-asked questions, http://www.thejobstunnel.com/new/jobs-tunnel.php?nic=faqs , continues to be an active web page.

Further, a Crain's Detroit Business article published on 04 June 2007 (at http://www.crainsdetroit.com/apps/pbcs.dll/article?AID=/20070604/SUB/706010360 states that DRTP requires approximately $100,000,000 in US federal assistance to build the tunnel that

DRTP is proposing. The SEMCOG long range transportation plan line item described in my 29 April 2008 letter states that DRTP will require no local, state, or federal aid.

The inconsistencies between the DRIC DEIS document statement referred to in Section 4 of my 29 April 2008 letter and other published documents continue to require resolution. As noted on 29 April 2008, the inconsistencies can be cured if both of the two co-owners of the DRT submit for inclusion in the DEIS record a written statement clarifying their intentions regarding all of the following: the construction of the proposed high-clearance one-track tunnel, the disposition or alternate use of the existing two tubes comprising the existing DRT. In addition, the statement from DRTP's two partners also needs to make clear DRTP's need for federal assistance.

5. **Rationale for Considering the BWB in the DEIS**

Please refer to this section in my 29 April 2008 letter.

6. **Existing and Projected Traffic on Detroit River Highway Crossings**

As noted in my 29 April 2008 letter, the DEIS should be amended to clarify the traffic forecasting assumptions and to quantitatively evaluate at least the fare policy options identified in Section 6 of my 29 April 2008 letter.

7. **Change in Forecast Base Year from 2004 to 2007 and Revision of Forecast for ~~2034~~2035**

In response to my request, MDOT on 22 May 2008 provided via email the 2005 through 2007 annual traffic counts for AMB and DWT. The report I received is reproduced immediately below.

ANNUAL TRAFFIC

		2,005	2,006	2,007
Ambassador Bridge	Passenger Cars	5,865,633	6,113,114	5,649,619
	Trucks	3,445,585	3,498,127	3,398,745
	Buses & Misc.	76,660	68,991	34,071
	TOTAL	9,387,878	9,680,232	9,082,435
Detroit-Windsor Tunnel	Passenger Cars	5,774,705	5,269,959	4,732,981
	Trucks	148,065	127,433	111,082
	Buses & Misc.	59,117	59,772	54,362
	TOTAL	5,981,887	5,457,164	4,898,425

If one combines the BWB annual traffic volume changes since 2004 (reported in my 29 April 2008 letter) with the AMB and DWT traffic volume changes since 2004 shown above, it is readily apparent that the total annual traffic demand on the three crossings combined has declined significantly since 2004 -- by 12% for passenger car traffic, 2% for commercial traffic, and 7% for PCE's (as defined on page 2 of my 29 April 2008 comments and also in the DEIS). Comments on page 8 of my 29 April 2008 submission refer to the DRIC forecasted compound

annual growth rates (CAGRs) for the total growth in traffic as being 2.9%/annum for automobile traffic and 3.3%/annum for commercial traffic, which means that the 2007 traffic volumes should have been about 10% greater than the 2004 traffic volumes.

It can be concluded that traffic growth forecasts on which the DRIC DEIS relied are not consistent with the reality of traffic flows observed during 2007. Even if the approximate 3% CAGR for traffic volume eventually is realized, the date that the capacity of the existing crossings will be matched by traffic demand perhaps will be in the order of five years later than the years indicated in Figure S-2 on page ES-2 of the DRIC DEIS.

The DEIS should be modified to present the traffic counts for the AMB, DWT, BWB and to amend the forecast for the planning horizon year, ~~2034~~ 2035.

8. **Modification of Forecasts to Reflect Changes in Fuel Prices Since 2004**

I have nothing to add to this section of my 29 April 2008 letter other than to state that fuel prices have continued to increase since 29 April 2008 and that the justification for the conclusions of this section as stated on 29 April 2008 are even more justified now than they were on 29 April 2008.

9. **Evaluation of Peak Period Travel for AMB, DWT, and BWB as a Group during ~~2034~~2035**

I have nothing to add to this section of my 29 April 2008 submission.

10. **Sensitivity of Peak Hour Travel Demand to Changes in Assumptions Made in Its Calculation; Peak Period Travel Disincentives; Evaluation of Reversible Lanes**

I have nothing to add to this section of my 29 April 2008 submission.

11. **Michigan – Upstate New York Origin-Destination Statistics and Projections**

I have nothing to add to this section of my 29 April 2008 submission.

12. **US-Canada Travel Origin-Destination Statistics and Projections**

Although I have received from the Province of Ontario some of the 1999 data referred to in this section of my 29 April 2008 submission, I have not yet had an opportunity to evaluate the data.

The 2005 data continue to be unavailable, apparently due to inaction by the Federal Highway Administration to execute its data sharing agreement with its Canadian counterpart agency.

As indicated in my 29 April 2008 submission, given the non-availability of the 2005 data, and given that practical alternatives to the DRIC project can not be evaluated without such data, it is imperative that the DEIS be amended to include the 2005 origin-destination information and then released to the public for additional comment.

13. Intermodal Rail Diversion of Truck Traffic

I wish to supplement the comments in this section of my 29 April 2008 letter with the following comments.

As noted in my 29 April 2008 submission, the TDF states that approximately 44% of the current total truck volumes on the AMB are divertible to rail. The total commercial vehicle volume on the AMB during calendar year 2004 was 3,370,000 vehicles [TDF, page 31 (pdf page 40)]. If one divides that figure by 365 and then by 2, and multiplies the result by 44%, it is apparent that more than 2,000 commercial vehicles travel each day in each direction between Detroit and the Greater Toronto Area (GTA).

The TDF forecast for year 2035 is that the total commercial traffic across the border in Detroit will be 8,060,000 [TDF, page 97 (pdf p. 106)]. Interpolating that number to a daily truck traffic volume of travel and assuming that the commercial traffic between Detroit and the GTA is still 44% of the total, it is apparent that the average truck traffic between the two locations will be more than 4,800 per day/direction.

An intermodal train with one 4,000 hp engine can pull a train consisting of 100 semi trailers, especially if it is a train consisting of Roadrailer type highway trailers. Thus the market for rail transport of trailers between Detroit and the GTA at present is approximately one train leaving from each end of the route once every hour, 20 hours per day. As of 2035, that market potential increases to one train leaving each end of the route every 30 minutes.

The typical tractor required to haul one semi-trailer on a highway is equipped with a 400 horsepower engine, which means that 100 trailers towed on a highway require a total propulsion capacity of 40,000 horsepower, instead of 4,000 horsepower if transported by railroad. Theoretically there could be a 90% reduction in the fuel consumed in transporting trailers across southwestern Ontario by railroad instead of having individual tractors hauling them between Detroit and the GTA. The potential may very well exist to reduce emissions from the Detroit-GTA freight vehicles by 90% as well.

Rather than rely on historical narrative, the DEIS should quantitatively assess the potential for intermodal transport of truck trailers between Detroit (and points inland from Detroit) and the GTA.

14. Public Transportation Options

I have nothing to add to this section of my 29 April 2008 submission, other than to point out that, apparently as the result of trade agreements between the US and Canada, the number of "Windsor Census Metropolitan Area" residents working in the USA more than doubled between 1991 and 2001, from 2,545 to 6,975). [TDF, page 26]. If all of these residents travel during one peak hour each weekday morning and vice versa each weekday afternoon and are in autos occupied only by the commuter as the driver, they alone would account for more than two lanes of traffic capacity. Accordingly, public transportation is indeed one part of strategy that constitutes a reasonable alternative to the DRIC project.

15. Low-Cost Reasonable Alternatives

I have nothing to add to this section of my 29 April 2008 submission.

16. DEIS Technical Reports

I have nothing to add to this section of my 29 April 2008 submission.

Respectfully submitted,

[redacted]

[redacted]

December 12, 2008

Mr. Dave Wake
Windsor Projects Coordinator
Detroit River International Crossing Project
Windsor Office
1010 University Ave. W., Suite 104
Windsor, Ontario
N9A 5S4

Dear Mr. Wake,

On behalf of the residents of the Huron Estates neighbourhood, we wish to inform you of the results of a process of community consultation we have undertaken in our area and identify for you our particular concerns related to the DRIC project's proposed Windsor-Essex Parkway. Enclosed with this letter you will find the original returned canvass sheets from many households in our Huron Estates Community. These sheets and this letter are submitted to the DRIC Project in the belief that we have fulfilled the requirements of the DRIC process for making submissions by the deadline of December 12, 2008, to ensure this input will be included in the Parkway Environmental Impact and Assessment Study.

The canvass-sheet was designed by the Huron Estates planning committee and distributed to all 255 homes in our subdivision. The form asked residents to prioritise the three major concerns related to DRIC's proposed Parkway, as identified by the planning committee based on early feedback from the community. The three issues were as follows:

a. It does not protect our distance from it. There are 14 lanes of traffic right next to our backyards, above grade, from Pulford to over Turkey Creek, with no buffer zones, no berms, only a " proposed noise wall". We want this section under the Grand Marais Drain, below grade and covered.
b. It does not protect our air quality. There is no capture or treatment of diesel exhaust, a major health hazard. We want venting, filters or scrubbers, and greenery to clean up the exhaust pollutants.
c. It does not protect our natural environment and land use. It does not protect the value of our homes and neighbourhood. We want longer, wider covered sections with real usable parkland on the "Parkway".

In addition, space was provided on the form for any comments or further concerns residents wished to note.

Of the 255 homes canvassed, we received responses from 122 resident homes by phone or e-mail. In addition, we received a return of 90 completed canvass sheets, copies of which are enclosed. Overall, the response from residents was consistent. Residents were equally concerned about the issues of air quality, noise and sight pollution resulting from the community's proximity to the highway. They were also concerned by the lack of usable parkland in the current DRIC proposal, which also seriously limits connectivity to the other side of the proposed Parkway. Many residents also noted their concern about a negative impact on the value of their home.

The Huron Estates community is adjacent to a part of the Parkway that, according to the DRIC Parkway map, is "at or above grade". We have received verbal assurances from you and your project team that the roadbed in this section would be "slightly or somewhat below grade" but do not consider a below-grade roadway a sufficient measure to address our concerns regarding the impacts of noise and air pollution on our community.

The key recommendation from all the responses of our Huron Estates canvass is that the section of the Parkway directly adjacent to our community needs to be not only below grade, but most importantly, covered (referred to by some as being "tunnelled"). Like most other sections of the DRIC Parkway that come close to a residential community, residents of Huron Estates want the section of roadway from Pulford St. to past Grand Marais and Lambton Roads to be cut and covered.

Even sections of the proposed Parkway with low adjacent population density have been conceived in the cut and cover design. Surely our 255 homes at Huron Estates deserve the same cut and cover design and thus the same protections. Our area is as densely populated as the Howard Avenue area and certainly we are much more densely populated than the Spring Garden area. We know that other communities have been given consideration to address the negative impact of the proposed Parkway on the quality of life in their neighbourhoods. They have protection from the noise and air pollution by a covered Parkway section. We are asking for similar and consistent consideration for our community in the design of the adjacent section of the proposed Parkway.

The "cut and cover" approach is the only design that adequately addresses the primary concerns identified in our canvass of the Huron Estates community. A cover will protect the community from the noise and unsightliness of diesel traffic; it will offer protection from air pollutants; and it will provide more parkland, with usable, active green space, on the Parkway. In addition to these reasons, this approach will also help to protect the value of adjacent homes.

As noted, it is our intention and belief that this letter and the attached materials constitute a formal submission by the combined residents of Huron Estates to the DRIC project within the specified timeframe and in accordance with requirements to undertake community consultation as part of the environmental assessment process. In addition however, we look forward to meeting with you at your earliest convenience to discuss the views and concerns outlined here more fully. In the interim, should you have any questions or concerns, please do not hesitate to contact either [redacted] or [redacted] at [redacted] or [redacted] and [redacted] at [redacted]

Yours truly,

[redacted]

[redacted] and [redacted]

[redacted] and [redacted]

Encl.

Enclosed with this submission were 90 questionnaires completed by residents of the Huron Estates community.

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BORDEN
LADNER
GERVAIS

December 12, 2008

Delivered by Email

Ontario Ministry of Transportation
Windsor Border Initiatives
Implementation Group
949 McDougall Avenue
Suite 200
Windsor, ON N9A 1L9

Attention: Roger Ward, Senior Project Manager

Dear Mr. Ward,

Re: OPTrust Retail Inc. - Detroit River Crossing
Environmental Study Report

Please be advised that we are the solicitors for OPTrust Retail Inc., the owners of the Windsor Crossing Outlet Mall. Windsor Crossing Outlet Mall is the largest retail/commercial facility directly impacted by the current design for the new road link.

As you know, we have been in contact with the Ministry of Transportation's representatives and its consultants, URS, concerning the impact of the DRIC project on our client's property. We first met with Roger Ward and URS representatives on November 19th, 2007 at URS offices in Markham. Subsequently, our client, although it was under no legal obligation to do so, further attempted to mitigate its potential future losses by retaining BA Group to review the then current plans for the road link and proposed mitigation measures. Afterwards, our client retained architectural and marketing consultants to advise it further with respect to mitigation opportunities. Intervening in our client's review, through its consultants, of the impact of the proposed taking from its property were revisions as set out in the environmental study report released in November, 2008, which increased the property requirements from our client.

We write to register our client's objection to the current design as it appears that even if mitigation efforts are fully put into place, the economic future of the Windsor Crossing Outlet Mall will be significantly challenged. Key tenants of the mall are already advising our client's agent, Bentall LP, of their concerns respecting the security of their tenure in view of recent DRIC announcements. Accordingly, we cannot in this communication be fully explicit respecting our client's concerns as it may engender an inordinate response on behalf of the tenants whose leases are coming up for renewal. Suffice it to say that the

BORDEN
LADNER
GERVAIS

Windsor Crossing Outlet Mall makes a significant contribution to the economic life of the greater Windsor area. The current proposals put its economic future in jeopardy and thus threatens to encumber the project with a substantial financial burden, estimated in the many tens of millions of dollars. Our expert advice is that this burden cannot be avoided by mitigating the impacts of the current design.

Accordingly, we urge you to consider substantial and material changes to the current design. While we recognize that our client will be made economically whole through the expropriation process, it appears to us on our respectful review of the written material available, that the consequences of the current design on the operation of the Windsor Crossing Outlet Mall have not been fully taken into account in the Environmental Assessment process to date.

We look forward to meeting with you to discuss this matter further. As from time to time, Mr. Waqué of our office has been keeping Lynn Sebastien of MTO current with our efforts in this regard, a copy of this letter is being sent to her for her information.

We will be pleased to provide further information to you on a confidential and without prejudice basis.

Yours very truly,

Stephen F. Waqué/Christel Higgs
SFW/CH/cm

::ODMA\PCDOCS\TOR01\3971610\1

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NEEGAN BURNSIDE

December 11, 2008

Walpole Island First Nation
R.R. No. 3
Wallaceburg, ON N8A 4K9

Attention: **Dr. Dean Jacobs**

Re: **Preliminary Review of the Detroit River International Crossing**
Draft Environmental Assessment
NB File: FC013629

Dear Dr. Jacobs,

Please find enclosed our Environmental Assessment Team's review of the Detroit River International Crossing Environmental Assessment.

It is our understanding that comments are to be submitted to the Ministry of Transportation by tomorrow, December 12, 2008.

If you have any questions, please feel free to contact myself or Fiona Christiansen.

Yours truly,

Neegan Burnside Ltd.

Stephen Burnett, P.Eng.
SB:kc
Enc.

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NEEGAN BURNSIDE

Memorandum

	DATE	December 11, 2008 FILE NO. FCO 13629
	RE	Preliminary Review of the Detroit River International Crossing Draft Environmental Assessment (November, 2008)
To	ATTENTION	Dr. Dean Jacobs
	COMPANY	Walpole Island First Nation
From	NAME	Tricia Radburn, Environmental Planner
Reviewed by:	NAME	Peter Somers, Senior Advisor, EPA Fiona Christiansen, Manager, EPA Steve Burnett, Project Manager

Introduction:
Neegan Burnside Ltd. (Neegan) has been retained by Walpole Island First Nation (WIFN) to undertake a peer review of MTO's Draft Environmental Assessment (November 2008), with specific focus on aspects of the Project that fall within the interest of WIFN, such as the natural environment and archeology. The following provides Neegan's comments with respect to the above-captioned Environmental Assessment "the EA."

In general, we are pleased with the substantial effort that MTO's team (URS Canada Inc. ("URS") and LGL Limited ("LGL")) have put into data collection and characterization of existing conditions in the Area of Interest ("AOI"). Given the immense scope of the project, the study team has also done good work to identify potential impacts, evaluate project alternatives and consult stakeholders and the public. At least thirteen separate meetings have been held with the Walpole Island First Nation ("WIFN") and we are satisfied that the duty to consult, under the *Ontario Environmental Assessment Act*, has been met.

We do however have reservations regarding the timing of MTO's response to our initial concerns (April 2008). Specifically, Neegan, on behalf of the WIFN, provided comments on the *Draft Practical Alternatives Evaluation Working Paper, Natural Heritage, Version 1* (LGL Ltd., July 2007) in a memo dated April 15, 2008. MTO provided a response to those comments on October 17, 2008, followed by a meeting in early November. The timing of that response was such that WIFN's comments on the Practical Alternatives

were not addressed until after the project had moved ahead to the Preferred Alternative stage. We feel that this was not appropriate and did not meet the spirit of the EA process in terms of meaningful involvement of key stakeholders in the evaluation of alternatives. We also note that meeting minutes were not circulated following the above mentioned meeting. This is of particular concern as specific commitments were made to WIFN during this meeting and these commitments were to be documented in the EA. We believe the study team has good intentions to carry out all of their stated commitments. However, we would like to see additional information in the EA to ensure that commitments will be followed through

We understand that the EA is only intended to provide mitigation measures at the conceptual level, and that many of the mitigation measures will be developed in greater detail, at the detailed design stage of the Project. However we suggest that some additional information be provided to clarify when commitments will be undertaken, who will be responsible, and how the WIFN be consulted and/or engaged and in what capacity. Specifically:

1. Archaeological/Cultural Resources:
   - The Stage 2, 3 and 4 (if required) Archaeological Assessments are still in progress. There is no indication of how the WIFN will be contacted should any aboriginal cultural resources be identified during these upcoming assessments.
   - **Please clarify the following in the EA: When will additional discussions be held with WIFN to determine if/how WIFN field work monitors could be involved (WIFN have confirmed that Monitors could be trained over winter months if required). Who will be responsible for cultural resources? How will possession of archaeological finds be determined?**

Please note that D.R. Poulton and Associates are conducting a review of the Archaeological report(s) and may have additional comments and questions that will be submitted under separate cover. This delay is a result of a delay in MTO providing final documents for review.

2. CEAA Screening/Cumulative Effects Assessment:
   - We understand that the requirements under the *Canadian Environmental Assessment Act* will apply to the Project, including the requirement for an assessment of cumulative effects, however we are unclear as to when the CEAA Screening will be undertaken and how WIFN will be involved.
   - **Please clarify the following in the EA: When will the CEAA Screening will be undertaken, who will be responsible for overseeing it (we assume Transport Canada) and how will the WIFN be consulted?**

3. Natural Heritage Mitigation:
   - Section 10.4.3 of the DRIC draft EA states that mitigation for the loss of vegetation communities and rare plant species will be developed at the detailed design stage as part of a landscape plan. It is intended that the landscape plan will be designed to achieve "no net loss of vegetation area, attributes or function". We concur that this is an appropriate goal and are pleased that there are plans to enhance natural areas and create a net benefit. The draft EA currently only makes reference to the restoration of prairies and forests. We would like to ensure that restoration plans also include wetland communities as there are number of significant and particularly rare wetland communities that will also be affected by the project.
   - **Please clarify the following in the EA: Will the WIFN be engaged regarding impacts to medicinal plants and if so how/when will this occur? Who will be responsible for overseeing the design and implementation of the Landscape Plan? When will work on the Landscape Plan begin? Who will be responsible for monitoring the success of restoration efforts? Who will be responsible for ongoing maintenance (e.g. for prairie habitats)? Will WIFN's Heritage Centre be involved, given their extensive experience in prairie and wetland habitat management and restoration? Will options to make use of the WIFN's Land Trust be explored?**

4. Species at Risk:
   - The draft EA indicates that mitigation measures for designated species at risk will be developed during the permitting process under the *Ontario Endangered Species Act* and federal *Species at Risk Act*.
   - **Please clarify the following in the EA: When will mitigation measures be developed? Will WIFN's Heritage Centre be involved and in what capacity? Please confirm that MNR will arrange a meeting with WIFN at an appropriate time during the *Ontario Endangered Species Act* ("OESA") permitting process. During this process WIFN will be involved in the development of compensation rations and the development of mitigation measures for species at risk. WIFN understand that they may be able to assist with regard to providing seed stock for the Project.**

5. Fish and Fish Habitat:
   - Given the below-grade parkway design proposed, barriers to fish migration will be created. Fish locks are proposed as mitigation on the Cahill and Lennon Drains.
   - **Please clarify the following in the EA: Are fish locks financially and practically feasible? How do they operate? Who will be responsible for monitoring the efficacy of fish passage and for operating and maintaining the locks in the long-term? Will consideration be given regarding**

engaging the WIFN with regard to the potential opportunity to re-locate mollusc species from Walpole Island to the Detroit River?

The key concerns identified above can be remedied with minor additions to the draft EA to document these additional commitments, to describe how commitments will be implemented and to identify who will be responsible for their implementation. We suggest that the table in Section 10.5 of the draft EA document, which summarizes environmental effects and mitigation, be expanded to include additional columns, such as those provided in the attached table. This table is only a rough framework to provide an example of the type of information that could be included. We assume MTO will complete the table where questions have been posed or cells left blank.

Once this information is provided, we will be in a better position to support a final EA for the proposed project.

We hope this review provides you with sufficient information. Please do not hesitate to contact us with any questions or concerns you may have.

Prepared by:

T Radburn

Tricia Radburn, Environmental Planner

Reviewed by:

Fiona Christiansen, Manager, Environmental Assessment and Planning

Table 1: Additional Information to be Included in Table 10.5 in order to Solidify Draft EA Commitments

Existing Columns			Recommended Additional Columns		
Environmental Element/Concern and Potential Impact	**Concerned Agencies**	**Summary of Environmental Effects and Mitigation**	**Description of Future Commitments**	**Who is responsible for commitments and monitoring?**	**When will the commitment take place?**
E.g. Archaeological Resources	• As identified in current table	• As identified in current table	• Completion of Stage 2, 3 and 4 Archaeological Assessments • Ongoing discussion with WIFN regarding possession of artifacts should aboriginal resources be recovered	• Who will contact WIFN if artifacts are found?	
E.g. Vegetation and Vegetation Communities	• As identified in current table	• As identified in current table	• Detailed restoration in the landscape plan • Ongoing consultation with the WIFN regarding participation and employment opportunities with respect to restoration planning and implementation	• Who will be responsible for monitoring? • Who will be responsible for ongoing maintenance, particularly with respect to restored prairies? • Who will negotiate with appropriate authorities regarding enhancements/restoration opportunities within adjacent designated natural areas?	
E.g. Fish and Fish Habitat	• As identified in current table	• As identified in current table		• Who will be responsible for monitoring habitat structures and fish locks? • Who will be responsible for ongoing maintenance and operation of fish locks?	
Wildlife and Species at Risk	• As identified in current table	• As identified in current table	• Bird migration studies • Identification of Eastern foxsnake habitat	• Who will be responsible for ensuring studies are completed?	• When will studies take place?

Ministry of Culture

Programs and Services Branch

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Ontario

December 16, 2008

Mr. Roger Ward, Senior Project Manager
Ministry of Transportation
Windsor Border Initiatives Implementation Group
949 McDougall Avenue, Suite 200
Windsor, ON N9A 1L9
email: detroit.river@ontario.ca

Subject/Project: Detroit River International Crossing Environmental Assessment Study – Draft Environmental Assessment Report

Dear Mr. Ward,

Thank you for contacting the Ministry of Culture (MCL) regarding the draft Environmental Assessment (EA) Report for the Detroit River International Crossing EA Study dated November 2008.

MCL supports the objectives of the "Let's Get Windsor- Essex Moving" Strategy and welcomes the opportunity to work cooperatively with the Ministry of Transportation (MTO) to advise on heritage considerations in the environmental assessment process.

MCL's interest in this undertaking relates to our mandate of conserving, protecting and preserving Ontario's heritage. MCL would, therefore, be interested in remaining on the circulation list and being informed of the project as it proceeds through the EA process.

This Ministry generally supports the approach and commitments made. However, we have the following comments and recommendations to better address heritage:

1. Summary of the proposed Environmental Assessment

The Detroit River International Crossing (DRIC) Environmental Assessment Report documents the coordinated environmental study undertaken by the Border Transportation Partnership, which includes the Ontario Ministry of Transportation, Transport Canada, the Michigan Department of Transportation and the U.S. Federal Highway Administration. The study resulted from the *Planning/Need and Feasibility (P/NF) Study* completed in 2004 that identified the need to address the safe and efficient movement of people and goods in the long-term between Southwestern Ontario and Southeastern Michigan.

The report states that the DRIC is part of an overall international transportation improvement project that will require approvals from governments on both sides of the border. The Partnership's coordinated process facilitated the joint selection of a preferred river crossing, location to meet the requirements of the Ontario Environmental Assessment Act (OEAA), Canadian Environmental Assessment Act (CEAA), and the United States National Environmental Policy Act (NEPA) effectively and efficiently.

In addition, a key component of the EA study involved preparing an Environmental Assessment Report, to document environmental effects and the process that led to the selection of the Technically and Environmentally Preferred Alternative (TEPA). The report supports the analysis and evaluation of alternatives, along with the environmental and technical studies that have been undertaken in preparation of the EA report.

In a separate but parallel process, the Government of Canada, the Province of Ontario, the City of Windsor, and Essex County have continued to work together to reach agreement on additional initiatives to be pursued under the "*Let's Get Windsor-Essex Moving*" strategy. This initiative is aimed at relieving congestion and improving traffic flows to existing crossings in a manner that is consistent with the requirements of the Detroit River International Crossing Project.

2. Recommendations

- The Glossary of Terms should include the following definitions (from the Provincial Policy Statement, 2005):

  Archaeological resources: includes artifacts, archaeological sites and marine archaeological sites. The identification and evaluation of such resources are based upon archaeological fieldwork undertaken in accordance with the Ontario Heritage Act.
  Archaeological sites: any property that contains an artifact or any other physical evidence of past human use or activity that is of cultural heritage value or interest.
  Areas of archaeological potential: areas with the likelihood to contain archaeological resources. Criteria for determining archaeological potential are established by the Province, but municipal approaches which achieve the same objective may also be used. Archaeological potential is confirmed through archaeological fieldwork undertaken in accordance with the Ontario Heritage Act.
  Built heritage resources: one or more significant building, structures, monuments, installations, or remains associated with architectural, cultural, social, political, economic or military history and identified as being important to a community. These resources may be identified through designation or heritage conservation easement under the Ontario Heritage Act, or listed by local, provincial or federal jurisdictions.
  Conserved: the identification, protection, use and/or management of cultural heritage and archaeological resources in such a way that their heritage values, attributes and integrity are retained. This may be addressed through a conservation plan or heritage impact assessment.
  Cultural heritage landscape: a defined geographical area of heritage significance which has been modified by human activities and is valued by a community. It involves a grouping)s) of individual heritage features such as structures, spaces, archaeological sites and natural elements, which together form a significant type of heritage form, distinctive from that of its constituent elements or parts. Examples may include, but are not limited to, heritage conservation districts designated under the Ontario Heritage Act; and villages, parks, gardens, battlefields, mainstreets and neighbourhoods, cemeteries, trailways and industrial complexes of cultural heritage value.
  Cultural heritage resources: include built heritage, cultural heritage landscapes, and marine and other archaeological sites.
  Cultural heritage value: The Ontario Heritage Act, Regulation 9/06, identifies criteria for determining cultural heritage value. While some significant resources may already be identified and inventoried by official sources, the significance of others can only be determined after evaluation.

  Delete the following terms: 20th century Euro-canadian, historical settlements, historic Euro-canadian, historic pioneer.

- Under Section 4 [Description of the Existing Environment] – 4.5 Cultural Resources

  We recommend that the following wording be included: "The cultural environment includes cultural facilities (e.g. museums, libraries, theatres) and properties of cultural heritage value (e.g. archaeology, built heritage and cultural heritage landscapes) in the Analysis. Significant cultural heritage resources, including, archaeological sites, built heritage resources and cultural heritage landscapes, are located within the transportation corridor. The identification of any impact a proposed development or site alteration may have on the cultural heritage resources will need to be evaluated. Recommendations of alternative conservation methods to mitigate the impact of a proposed development or site alteration on cultural heritage resources will need to be addressed in appropriate reports (archaeological assessment report and/or heritage impact assessment report)".

  The Windsor area has a long-history of First Nations, Francophone, Euro-Canadian and American slaves' settlement and it contains a large number of archaeological sites, important buildings and cultural heritage landscapes.

- Under Section 4.5.1 Archaeological Resources, a summary is provided of the Historical maps and Euro-Canadian History in this section. It would be helpful to include a brief summary of native occupation of the specific areas identified in the section entitled "Physiography and Assessment of Pre-contact Archaeological Potential." Marine archaeological sites should be referenced in this section.

- Under Section 4.5.2 Built Heritage Resources, the wording in this section needs to be consistent throughout the document. As such, the wording should be revised to Cultural Heritage (Built Heritage Resources and Cultural Heritage Landscapes) and Archaeology. This is consistent with the Provincial Policy Statement, 2005.

  This section states that the assessment addresses above ground cultural heritage resources more than 50 years old. However, the established practice in other jurisdictions in Canada follows the '40 year rule', referenced in several key documents including the federal Treasury Board's Policy on Management of Real Property (1982), Cultural Heritage Process (Management Board Secretariat/Ontario Realty Corporation, 1994), the Municipal Engineers Association Class Environmental Assessment, Environmental Guide for Built Heritage and Cultural Landscapes (MTO, 2007) and Section 3.7 Built Heritage and Cultural Landscape Environmental Reference for Design (MTO, 2007).

  We note that the Detroit River, a Canadian Heritage River and American Heritage River, is mentioned in Section 4.5.1. The Detroit River should also be identified as a cultural heritage landscape. It would be more appropriate to include this information under Section 4.5.2.

- Under Section 7 [Description of the Area of Continued Analysis] – 7.4 Cultural Resources, the wording in this section needs to be consistent throughout the document. As such, the wording should be revised to Cultural Heritage (Built Heritage Resources and Cultural Heritage Landscapes) and Archaeology. This is consistent with the Provincial Policy Statement, 2005. This section provides an overview of archaeological and heritage resources that are existing within the Area of Continued Analysis.

- Under Section 7.4.1 Archaeological Resources, it is understood that the Environmental Overview Paper – Canadian Existing Conditions Volume 1 contains a list of archaeological sites, however there is a list of built heritage resources provided in Section 7.4.2, and it would be helpful to have a correspondingly brief summary/description of newly discovered archaeological sites.

In Section 4.5.1 the previously registered sites are mentioned and are listed in detail in the Environmental Overview Paper – Canadian Existing Conditions Volume 1, however it is not clear whether any of these sites are located in the Area of Continued Analysis or TEPA.

- Under Section 7.4.2 Heritage Resources, the wording in this section needs to be consistent throughout the document. As such, the wording should be revised to Cultural Heritage (Built Heritage Resources and Cultural Heritage Landscapes) and Archaeology. This is consistent with the Provincial Policy Statement, 2005.

  It would be helpful to identify the proposed Sandwich Heritage Conservation District within the Area of Continued Analysis and TEPA.

- Under Section 10 [Environmental Effects and Mitigation of the Technically and Environmentally Preferred Alternative (TEPA)] – 10. 3 Cultural Resources the wording in this section needs to be consistent throughout the document. As such, the wording should be revised to Cultural Heritage (Built Heritage Resources and Cultural Heritage Landscapes) and Archaeology. This is consistent with the Provincial Policy Statement, 2005.

- Under Section 10.3.1 Archaeological Resources, under mitigation measures referring to the construction phase, two provincial references need updating to Manager, **Culture Programs Unit,** Ontario Ministry of Culture for archaeology, and for cemeteries issues it is now Ontario Ministry of Small Business and Consumer Services.

  In the conclusion, the second and third bullets refer to a need to complete the Stage 2 and 3 archaeological assessments in order to determine the extent of impacts to significant archaeological resources within the TEPA. However, in the list of supporting documents the "Technically and Environmentally Preferred Alternative – Stage 2 archaeological Assessment Report" is pending, no mention is made of the Stage 3 report. Is that to be completed after the next field season?

- Under Section 10.3.2 Built Heritage Resources, the wording in this section needs to be consistent throughout the document. As such, the wording should be revised to Cultural Heritage (Built Heritage Resources and Cultural Heritage Landscapes) and Archaeology. This is consistent with the Provincial Policy Statement, 2005. There is no need for further definition in this section, as all definitions are in the Glossary.

  There is no reference about cultural heritage landscapes (identification of resources, assessing impacts and mitigation measures).

  We recommend that the following wording be included under 'Assessing impacts to Built Heritage Resources': "The proposed undertaking may impact (direct or indirect, physical or aesthetic) cultural heritage resources:
  - destruction or unsympathetic alteration of all or part of a cultural heritage property;
  - isolation of a cultural heritage property from its surrounding environment, or
  - introduction of physical, visual, audible, or atmospheric elements that are not in character with a cultural heritage property or its setting.[1]"

  The report mentions that the mitigation measures were looked for six built heritage resources but there is no information on the draft work plan. Care shall be taken by MTO to ensure all conservation options have been considered and to document all its efforts in conserving cultural heritage resources.

[1] From *Guidelines on the Man-Made Heritage Component of Environmental Assessments* (Ministry of Culture, 1980)

- Under Section 10.5 Summary of Environmental Effects and Mitigation,
  Item 7.0 Archaeology - please review provincial references as per previous comments under Section 10.3.1.
  Item 8.0 Cultural Heritage – please review the wording in order to be consistent. See also previous comments under Section 10.3.2.

- Under Section 10.6.4 Cultural Environment, please note the wording should be consistent throughout the document. It would be appropriate to explain what kind of assessment would be expected for archaeology (e.g. archaeological assessment reports) and for cultural heritage – built heritage resources and cultural heritage landscapes (e.g. heritage impact assessments, documentation report).

- Under Section 11.2 Compliance Monitoring Plan, during the Construction stage it is necessary to continued to monitor the condition of the remaining cultural heritage resources to make sure that they are protected from construction activities and that they are secured and maintained. Construction activities that may affect cultural heritage resources include: Clearing and grubbing; Drainage; Grading, cuts and filling; Temporary site access; Utility removals, relocation, installation; Blasting; Borrowing and quarrying; Channel construction and modification; Coffer dam installation; Culvert installation; Dust control; Operation of equipment; Pavement grinds, sawing and milling; Location of portable plants; Structure demolition, structure excavation and structure installation including piles, piers and abutments; Stockpilling; Temporary diversions, detours; Tunnelling, jacking and boring; Removal of installation of utilities and Work yard development.

- Draft Archaeology Work Plan (February 2006)

  Under Table 1 - Archaeological Assessment By Study Stage – within the Level of Analysis Box under Stage 1 – Define Study Area and Stage 2 – Illustrative Alternatives – it is mentioned that registered sites and a model of archaeological potential will be based on proximity to water using mapping at least to 1:250,000 scale & likely 1:50,000 scale. It would be inappropriate to use 1:250,000 scale mapping when looking at archaeological site locations considering the registered archaeological site information is maintained at MCL on 1:50,000 scale mapping.

  Under Section 4.2 Task 2 – Data collection – Reference is made to the Stages 1 and 2 archaeological assessments being conducted in accordance with the Stages 1 to 3 archaeological assessment technical guidelines of the MCL, which is may be the 1993 document of that name. However, in Section 10.3.1 of the Draft ESR it indicates that MTO mandates that consultants working on MTO projects adhere to the 2006 Draft standards. The 2006 Draft standards need to be mentioned in this section of the Work Plan document.

- Draft Cultural Heritage Work Plan (February 2006)

  - The report informs the purpose of the working papers, however it is not clear what is their relation and consistency with the MTO's Environmental Guide for Built Heritage and Cultural Heritage Landscapes (February 2007).

  - Under Section 1.1.1 Built Heritage Resources and 1.1.2 Cultural Heritage Landscapes, we recommend that the definitions are from the Provincial Policy Statement, 2005. There is no mention to the Detroit River, a Canadian Heritage River and American Heritage River. The Detroit River should be identified as a cultural heritage landscape.

- Draft Practical Alternatives Evaluation Working Paper – Archaeology (April 2008)

  - Table 1 does provide information on archaeological sites identified during Stage 2. However, it would be beneficial to be able to view Appendix C as it includes the larger list of sites, and it is not included as it is not for public display.

    In addition it would be helpful to be able to view Appendix A which contains a series of maps illustrating the location of all Priority 1 through 5 lands to better understand the evaluation of alternatives. Perhaps these two Appendices could be sent directly to the Ministry of Culture.

- Draft Practical Alternatives Evaluation Working Paper – Cultural Heritage (March 2007, revised April 2008) – also known as Cultural Heritage Resource Assessment Report

  - Under Section 1.2 – Purpose and Scope, the third paragraph "This report presents the results of background research, outlining *aggregate* areas and individual properties of heritage significance within the study area as a whole". It is not clear the meaning of aggregate within the heritage context.

    The 4th paragraph states that "This assessment addresses above ground cultural heritage resources over 50 years old". See comments above under Section 4.5.2 regarding the established practice of '40 year rule'.

    On Page 5, the Criteria for determining significance for the resources are recommended by the Province and two regulations under the Ontario Heritage Act are in place: Ontario Reg. 9/06 (Criteria for Determining Cultural Heritage Value or Interest) and 10/06 (Criteria for Determining Cultural Heritage Value or Interest of Provincial Significance).

    Please note that the wording is not consistent throughout the document and it should be consistent with the Provincial Policy Statement, 2005. We recommend that "features of heritage interest" be changed to "resources of cultural heritage value".

  - Under Section 1.3 - Data Collection, it should be consistent with MTO's Environmental Guide for Built Heritage and Cultural Heritage Landscapes (February 2007). There is no mention that the consultant have looked into other databases: if there are any provincially-owned or leased (by the province) heritage properties, as well as, any site identified through a provincial plaque or a heritage easement agreement with the Ontario Heritage Trust.

  - Under Section 2.3 – Area of Continued Analysis, the report identified 3 cultural heritage landscapes. There is no mention to the Detroit River and Highway 18 (Ojibway Parkway), a heritage highway, generally considered to be the oldest road in Ontario. Some native trails (Talbot Road, now Highway 3 and the Middle Road, now Highway 46) are also located in the Windsor area.

    It is not clear whether the cultural landscape unit 3 (Town of Sandwich) have the same boundaries as the proposed heritage conservation district.

  - Under Section 3.0 Heritage Impact Assessment, in addition to what is written there, we recommend that the following be included: "A heritage impact assessment (or equivalent study) is a study to determine if any cultural heritage resources (including those previously identified and those found as part of the site assessment) or in any areas of archaeological potential, are impacted by a specific proposed development or site alteration. It can also demonstrate how the cultural heritage resource will be conserved in the context of redevelopment or site alteration. Mitigative or avoidance measures or alternative development or site alteration approaches may be recommended." (MCL, Ontario Heritage ToolKit)

Under Areas of Impact, we recommend that the wording and strategy be consistent with MTO's Environmental Guide for Built Heritage and Cultural Heritage Landscapes (February 2007), especially Section 5.4 – Develop Preservation/Mitigation Strategy.

- Under Section 4.0 Recommendations, the report states that "although no significant part of the historic town of Sandwich is within the ACA, Sandwich as a whole is a heritage sensitive area and thus the selection of a bridge crossing location must take into account any direct or indirect impacts on the adjacent historic community". The consultant didn't articulate Sandwich's cultural heritage value. The bridge location has been selected and there is no information about either the selection and decision or the impacts.

- Bridge Conceptual Engineering Report (February 2008)

  - The bridge location has been selected and there is no information about either the selection and decision or the impacts. We recommend that this information be articulated within the Practical Alternatives Evaluation Working Paper – Cultural Heritage.

It is not clear when the "Technically and Environmentally Preferred Alternative – Cultural Heritage Resource Assessment Report and Stage 2 Archaeological Assessment Report" will be available for review and comments and how those relate to the final Draft EA.

Please find attached to this letter the Legislative Framework for Cultural Heritage Protection.

In general, MCL has no major objections or concerns regarding the process proposed for the completion of the environmental assessment. We look forward to continue working with MTO on this process and the opportunity to review the results of the Environmental Assessment. Please do not hesitate to contact MCL if you have any questions regarding best practices and the expectations of this Ministry for the conservation of cultural heritage resources.

Sincerely,

Karla Barboza
Heritage Advisor

Ministry of Culture
Programs and Services Branch
Culture Services Unit
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E. karla.barboza@ontario.ca

cc. James Hamilton, Manager (A)
Culture Services Unit, Ministry of Culture

Penny Young, Heritage Planner
Culture Services Unit, Ministry of Culture

Shari Prowse, Archaeology Review Officer
Culture Programs Unit, Ministry of Culture

Murray Thompson, Consultant Project Manager
DRIC Windsor Project Office, URS Canada Inc.

Attachment 1 - Legislative Framework for Cultural Heritage Protection

a) The Minister of Culture (MCL) is responsible for the administration of the *Ontario Heritage Act* and is responsible for determining policies, priorities and programs for the conservation, protection and preservation of Ontario's heritage, which includes cultural heritage landscapes, built heritage and archaeological resources.

   Furthermore, under the *Ontario Heritage Act*, the Minister of Culture is responsible for licensing archaeologists conducting archaeological fieldwork for proponents under the *Planning Act* and *Environmental Assessment Act*. As a term and condition of the license, archaeologists must follow standards and guidelines set out by the Ministry of Culture. MCL is currently updating the standards and guidelines for archaeological fieldwork and reporting.

b) In Ontario, environmental assessments are undertaken under the *Ontario Environmental Assessment Act*. The purpose of the Act is to provide for the protection, conservation and wise management of Ontario's environment. The Act defines environment in a broad sense that includes natural, social, cultural, economic and built environments. This broad definition of the environment makes the assessment of the impact of the undertaking on cultural heritage resources part of the standard environmental assessment process in Ontario. Environmental assessments made under the EA Act therefore assess and address the impact of the undertaking on cultural heritage resources.

c) The *Planning Act* sets out the legislative framework for land use planning in Ontario and lists matters of provincial interests, which include the conservation of cultural heritage resources. Section 3 of the Planning Act requires that decisions that affect planning matters "shall be consistent with" Provincial Policy Statement (PPS) under the Act.

d) Cemeteries are important and sacred places. While the operation and management of cemeteries in Ontario falls under the *Cemeteries Act*, administered by the Ministry of Government Services, over a hundred cemeteries have also been designated under the *Ontario Heritage Act*. The *Cemeteries Act* contains specific procedures for the closure (i.e. removal) of cemeteries if the Registrar of cemeteries determined that the closure is "in the public interest".

MAYOR – MAIRE
GARY McNAMARA

DEPUTY MAYOR – SOUS MAIRE
TOM BURTON

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Town of Tecumseh

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PLANNING AND BUILDING SERVICES DEPARTMENT

December 16, 2008

Mr. Roger Ward
Senior Project Manager
Ministry of Transportation
Windsor Border Initiatives Implementation Group
949 McDougal Avenue, Suite 200
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- VIA EMAIL and POST-

Re: Detroit River International Crossing Study
Draft Environmental Assessment Report, November 2008

Dear Roger:

Please be advised that the Town of Tecumseh Municipal Council, at its meeting held December 9, 2008, passed the following resolution:

"MOTION: (RCM-380/08) *Moved by* *Councillor Rita Ossington*
Seconded by *Mayor Gary McNamara*

That the Town Council, in accordance with the B. Hillman and G. DeGroot, December 5, 2008 Report 35/08, recommend Council:

1. *Endorse the Detroit River International Crossing Study Draft Environmental Study Report, dated November 2008, as prepared by URS Canada Inc. on behalf of the Ontario Ministry of Transportation and Transport Canada;*

2. *Request the Ontario Ministry of Transportation ("MTO") to continue to allow representation of appropriate Town of Tecumseh staff on a Steering Committee that will ultimately oversee the Detailed Design process;*

3. *Request that the MTO confirm the continuation of discussions regarding design alternatives for the DRIC recreational trail and its extension to the east to the Chrysler Canada Greenway; and*

4. *Advise the MTO of the need for on-going discussions with the Town in order to finalize matters related to municipal streets that are to be closed and/or realigned (Mero Avenue and portions of Outer Drive) and new local streets that may be required to provide access to lands that may become landlocked as a result of the Parkway design alternative.*

CARRIED"

I trust this information is to your satisfaction.

The Town appreciates the opportunities it has had available to it over the past years to engage in the DRIC process and looks forward to ongoing discussions as this important project moves forward.

Regards,

Brian Hillman, MA, MCIP, RPP
Director of Planning and Building Services.

BH:ed

cc. Tony Haddad, Chief Administrative Officer, Town of Tecumseh
Laura Moy, Director, Staff Services/Clerk
George De Groot, Director, Public Works and Environmental Services

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December 18, 2008

Roger Ward, Senior Project Manager
Ministry of Transportation
659 Exeter Road, 2nd Floor
London Ontario N6E 1L3

Re: Detroit River International Crossing Study –
Draft Environmental Assessment Report
MNR Review

Dear Mr. Ward,

Thank you for the opportunity to review the Draft Environmental Assessment Report for the Detroit River International Crossing Study (URS, November 2008). We have reviewed this document as it relates to our ministry's mandate with a specific focus on natural heritage and natural resources.

Please note that our review has been completed without receipt of the revised Natural Heritage Report. As such, the comments below reflect only our review of the Draft Environmental Assessment Report (EAR). Once the revised Natural Heritage Report is submitted, our comments may be addressed, refined or enhanced.

General Comments:
Overall, the authors of the Draft EAR have completed a thorough review of the issues and have attempted to address them. We acknowledge that the implementation of the Endangered Species Act 2007 brings forth new challenges; as these two processes are evolving concurrently, we appreciate the ongoing dialogue that has enabled us to address new and complex questions.

Incomplete Data and Analysis
Though this large comprehensive and complex report integrates several disciplines and attempts to synthesize the extensive data collection that has occurred since 2005, it appears that there are gaps in the data and/or analysis. Specifically, field work completed in 2007 and 2008 does not appear to be included in the Draft EAR.

Furthermore, we note that many of our previous comments do not appear to have been incorporated into the Draft EAR.

Due to the short timelines associated with the agency review of the Draft EAR along with the delayed release of the revised Natural Heritage Report, our review should be deemed cursory in nature.

Endangered Species
It is important to clarify the language regarding the Committee on the Status of Endangered Wildlife in Canada (COSEWIC), the Committee on the Status of Species-at-Risk in Ontario (COSSARO), the Species at Risk Act (SARA) and the Endangered Species Act (ESA). For greater clarity:

- COSEWIC and COSSARO are assessment bodies; specifically, they assess species and recommend 'at risk' rankings to the federal and provincial governments, respectively. Their rankings are a recommendation, not a legal listing.
- Environment Canada (EC-CWS or DFO) and MNR take that recommendation and list the species under the federal Species at Risk Act (SARA) and/or the Endangered Species Act (ESA) 2007, respectively. The 'at risk' ranking assigned under SARA or the ESA 2007 is the legal listing.

From a biodiversity standpoint, there is value in recognizing the COSEWIC and COSSARO recommended ranking, as they may sometimes differ from the legal ranking. Also, the COSEWIC/COSSARO rankings can indicate species that will soon have a change in legal ranking.

With respect to the mention of 'schedules' under the ESA 2007, it is of more value to identify the legal ranking under the ESA 2007 than the schedule it falls within. The schedules contained within the ESA 2007 were intended to identify the transition in protection for the species listed under the former Endangered Species Act (1971) to the new Endangered Species Act (2007).

Furthermore, the significance of species at risk, whether listed or rare, appears to have been downplayed in this report. This is done by identifying only the SARA species and then using language such as "Several provincially, regionally or locally significant species that occur…" It should be noted that there are vast numbers of provincially, regionally or locally rare species. The listing and the rarity should be clarified in the revised Natural Heritage Report and the Final EAR.

Use of Metric System
We recommend the Final EAR be written in the metric system (i.e. Canadian system). The author switches between metric and imperial systems.

The Draft Environmental Assessment Report
The air photo figures were poorly reproduced in the Draft EAR. This should be addressed in the Final EAR.

Section 4.5, Cultural Resources
There appears to some detail outlining the Euro-Canadian history; however, there is little or no reference to Aboriginal issues or pre-settlement occupation.

Section 4.6, Natural Environment
In regards to page 4-29, table 4.6, we recommend that the number of provincially listed species is included. Currently, table 4.6 mentions the number of federal SARA species and then the number of "provincially and locally significant species". The same concern applies to table 7.17 (page 7-73).

Section 4.6.1, Geology / Subsurface Environment

The potential impact of past solution mining activities in the area has been adequately addressed through the drilling of wells and evaluations undertaken by MTO. No further work is required.

There continues to be a potential concern of locating the bridge and/or plaza close to the BP Canada Energy Windsor Storage Facility (4300 Matchette Road/ EC Row). MNR regulates the storage caverns under the Oil, Gas and Salt Resources Act and by adopting CSA Z341 Storage of Hydrocarbons in Underground Formations.

BP Windsor Storage Facility is a nationally significant facility and parts of it are subject to National Energy Board approvals. This facility stores propane/ ethane/butane type of feedstocks in underground storage caverns. These feedstocks are flammable and explosive; furthermore, relatively large volumes are stored under high pressures at this facility. These stored products provide feedstocks for some of the refineries in Sarnia.

If not already completed, we would recommend that the proposed route /plaza should consider the potential safety risks with the nearby storage facility and determine if any additional mitigation measures are required as a part of the Hazard Identification and Risk Assessment.

Section 4.6.2, Aquatic Habitat and Communities
In regards to Detroit River, we seek clarification on the following:

- Proximity of the piers to the Detroit River
- Is there a requirement for shoreline reinforcement near those piers? If so, we recommend that soft shoreline techniques be used instead of sheet pilings.

The small tributaries, especially those that may support spring fisheries and spawning have been considered separate from the Detroit River. The nearshore ares of the Detroit River and the interactions with tributary mouths (i.e, some area identified as spring pike spawning or areas with gravel substrate) should be considered at the holistic level.

Along this stretch of the Detroit River, nearshore habitat is lacking and limited. Soft shoreline techniques and interaction with tributaries may mitigate against the deep transportation channel of the Detroit River.

Further characterization of the substrate and spawning suitability should be considered at the proposed pier area. Fish mitigation patterns should be considered if a pier is close to the river.

It appears there is a lack of information regarding potential spills oil leaks etc.; particularly as downstream of the proposed ditch includes large spawning areas for walleye, perch, whitefish, sturgeon and northern madtom (SAR). This should be considered.

Section 4.6.3, Vegetation and Vegetation Communities
In the last paragraph, the author states that there are 615 plant species and 133 are non-native; while in section 7.5.1, the author identifies 618 plant species and 186 are non-native. Clarify this discrepancy.

Section 4.6.4, Wildlife and Wildlife Habitat
We are currently working with LGL/ MTO to complete the wetland evaluation for the newly identified Ojibway Prairie Wetland Complex, which will be designated a provincially significant wetland. We will forward the wetland evaluation along with its boundaries once completed.

Section 4.6.5, Designated Natural Areas
We (Ontario Parks) are willing to discuss further potential opportunities surrounding the dedication of lands for protection. Specifically, opportunities to secure additional lands adjacent to Ojibway Prairie Provincial Nature Reserve, for the purposes of adding them to the park, would contribute to the protection of provincial significant species and associated habitat. In addition, consideration could be given to improving the outdoor recreational opportunities within the nature reserve e.g., trail and viewing platform upgrades.

This part of Ontario is considered to be one of the most biodiverse areas of the province; specifically for the number of species at risk. To highlight this biodiversity, we have attached a compilation of plant SAR for the Ojibway area and Walpole Island (Woodliffe 2001).

While Walpole Island is the single most significant natural area in Ontario with its size, array of significant natural areas (e.g. prairie, savanna and wetland); however, Ojibway area is also phenomenal. There are approximately equal numbers of recorded plant SAR on Walpole Island and the Ojibway area. The greater Ojibway area has been noted as one of the best areas in the province for insects, especially those that are SAR. Species new to science have been found in the Ojibway area. The significance of these designated natural areas is greatly understated in the Draft EAR.

Lespedeza virginica is also located in the Titcombe Road North ANSI (page 4-26); as an endangered species that is afforded general habitat protection under the ESA 2007, it is of significance and should be identified in this section.

Section 6.3.1, Central Alternatives, Conclusions
According to the authors, it appears aspects of regional mobility are considered of greater importance than edges of sensitive natural heritage features. This determination should be substantiated using scientific qualitative assessment. As many of the species involved are known to be at risk of extinction, we seek clarification on whether regional mobility have been consider of greater importance than edges of sensitive natural heritage features.

Section 6.3.2, Crossing / Plaza Alternatives, Tables 6.10 to 6.12
In these tables, there is a criterion specific to the quantity of endangered or threatened species (ETS) and/or their habitat. We are seeking clarity on the criteria used to identify and measure habitat for endangered species and threatened species. There are a significant number of endangered species and threatened species that will be impacted as a result of the project.

For example, in Table 6.11, the Eastern Foxsnake has a fairly large home range, and only 13 or 14 hectares have been identified to be impacted. The Plaza area for the TEPA is at least 55 hectares. We suggest that the authors consider whether more of the Plaza could be habitat for the Eastern Foxsnake as well as other endangered species and threatened species. The quantity identified in the table does not appear to align with our understanding of the impact of the project on the habitat of endangered species or threatened species.

We has not received mapping for the habitat of endangered species and threatened species; as such we seek to review the mapping and analysis. We understand that surveys are ongoing for certain species at risk. As we are uncertain in the methodology for identifying the quantity of ETS / habitat and consequently the impacts from a particular alternative on the identified ETS / habitat, we are unclear whether a stringent/ effective comparative analysis has occurred.

Also, we request additional information on how the low-moderate-high impact assessments in the tables were determined. Some low or moderate impacts, if only compared spatially, can represent high impacts to individual species or ecological functions, depending on the actual location and nature of the disturbance.

More details on the arithmetic evaluation should be provided to discern the differences in why X10 was selected as a preferred option over X1, which scored the same, with specific reference to species and natural areas impacted between the two.

Section 6.3.2, Crossing / Plaza Alternatives – Table 6.11
In Table 6.11, Plaza CC2 is not presented. Clarify whether Plaza CC2 and Plaza CC3 are separate or combined. According to Exhibit 6.3B, the size of CC2 is 214 acres and CC3 is 80 acres and therefore results in a combined footprint of 294 acres or ~119 hectares. Consequently, it appears that a quantity of 13 or 14 ha of ETS habitat would be impacted may be low.

Furthermore, based on our understanding of the plazas and crossings, CC7 (as should on exhibit 8.3) should have a much lower impact on the natural environment than CC2 and /or CC3.

Section 7.5, Natural Environment
In the subsections (e.g. vegetation, fish, wildlife), the report provides dates in 2006 and/or 2007 when field work was conducted. Specifically, in the draft EAR, vegetative data collection occurred only in 2006. We note that field staff were on site frequently in 2007 and 2008; yet there is no representative data. It does not appear that the data from 2007 and 2008 has been considered in the draft EAR; please ensure that the data and the analysis from 2007 and 2008 be reflected in the final EAR.

Detailed location information on species at risk and other natural heritage values, from the Natural Heritage Report, is needed for comparative overlay with the suggested and alternate route locations. At this time, it is not possible for MNR to confirm either the assessment of individual impacts or to compare impact severity among the different proposed routes. Furthermore, we are unable to prescribe appropriate mitigation measures for the preferred route and plaza location or determine that the recommendations provided will result in benefits to species or areas as described. Specific impact assessments and comparison of mitigation measure effectiveness and feasibility need to be demonstrated in either the revised Natural Heritage Report or the Final EAR.

Section 7.5.1, Vegetation and Vegetation Communities
It is important to note that many 'cultural' savannas and meadows identified in the study area still support indicators of natural savannas and prairies. Although these overall communities may exist in a degraded or cultural state, they often represent important functional habitats for plants and animals at risk. Some types of cultural disturbances such as mowing are not necessarily detrimental to the overall function of these communities, and may actually benefit the persistence of open meadow and remnant prairie habitats. Significance of vegetation communities must be evaluated on the basis of functionality as well as condition.

In the last paragraph of the Tallgrass Prairie section, page 7-44, there is discussion regarding the value of groundwater and its benefits to the survival of tallgrass prairie communities. Our understanding of this discussion is that the groundwater in the surficial aquifer is important for

the survival of tallgrass communities. We do not agree – most tallgrass prairie plant species are well adapted to drought prone situations.

On page 7-47, Species at Risk, we recommend the following changes:

- Summer snowflake, a G2 species, is not native to Ontario and should not be included as a SAR.
- Butternut is mentioned twice in this paragraph – once identifying it as listed under the ESA 2007, and once as only "provincially significant". Suggest removing mention under "provincially significant".
- Spiked / dense blazing star: For consistency, choose either spiked or dense as reference made to both common names throughout the EAR (e.g. p.10-16).

Section 7.5.2, Molluscs and Insects
In the Data Collection section, we would like to note that the Karner Blue Recovery Team is not a division of Environment Canada.

Section 7.5.4, Wildlife Data Collection
From a statistical perspective, the point counts for birds will be useful to determine the relative abundance level of many species; however, point counts record the most abundant species and have a tendency to miss the less common species. The nest surveys will allow breeding species to be identified later in the season as the adults are feeding young.

We note that the Visual Encounter Surveys (VES) was not completed for birds; VES were completed for other groups of fauna and provided the opportunity to spend quality time in various habitats targeted to ensure a greater number of species will be recorded. Specifically, provincially and locally SAR are more likely to be accounted for. It should be noted that the 5 or 10 minute point count relies mostly on hearing and is likely not to capture many of the less common species.

On page 7-62, the author references the extirpation of Butler's Gartersnake from Malden Park after construction of the E. C. Row Expressway. This is a strong indication of what may occur to the current population of Butler's Gartersnake after construction of this project.

FWCA is the **Fish and Wildlife Conservation Act** not the Fish & Wildlife Coordination Act.

Section 7.5.5, Designated Natural Areas
Exhibit 7.30: the ANSI boundary for Spring Garden is incorrect. For ANSI identification purposes, the ANSI should be delineated using the red line (ESA) as determined and approved by MNR.

Section 8.1.1, General Criteria – Crossings
Under environmental issues, consideration should be given to all natural heritage features including woodlands, provincially/regionally rare species, and not only "wetlands and/or endangered species".

Section 8.1.2, Description of Practical Plaza and Crossing Alternatives
If possible, the footprint for Plaza B/B-1 or related components should be shifted slightly north to better avoid encroaching into identified significant natural areas. Additional route adjustments should be considered to further reduce impacts to identified sites for Butler's Gartersnake and Eastern Foxsnake along the south side of the EC Row Expressway. Any MNR authorization under the ESA 2007 to disturb regulated species or habitats will require a

comprehensive assessment of all potential alternatives, including avoidance alternatives to the species, which could reduce the impact to existing species at risk values.

We request that more information on the nature of species at risk should be provided in table 8.3 (page 8-12); specifically, number of endangered species, threatened species, species of special concern, and provincially/nationally rare species. This will help to discern the weight of the specific species at risk impacted by individual crossing alternatives, as compared to lumping all species together.

Section 8.1.3, Analysis and Evaluation
It is our understanding that the additive weighting method is a good technique when alternatives differ from each other in significant ways (i.e the differences are large). For example, it may be considered an appropriate method to use when comparing the larger set of alternative crossings and routes and by applying adequate weighing factors to indicators and criteria at all disciplines levels (built heritage, storm-water management, natural heritage etc.).

Clarification is sought on the use of "Simple Additive Weighting" in the impact assessment at the Area of Continued Analysis level as the method does not adequately differentiate between the various scenarios. Specifically, it does not give a representative weighing once the score is summarized along with the scores of other disciplines.

One example is found in table 8.3 (page 8-13) where it appears that Plaza B is advanced for further consideration over other plazas due to the cost and time associated with the re-location of the Keith Transformer Station which is considered to be of "greater importance than the increased impact to the natural features".

Furthermore, in table 8.3, when reading the "protect the Natural Environment" features impacts under each scenario, it is difficult to say that one plaza differs significantly in impacts to natural heritage features from another plaza because the summaries are too general.

Following the logic through, with the scoring provided in tables 8.5, 8.6 and 8.7 is impossible. The detailed information needed to review the scoring in tables 8.5, 8.6 and 8.7 is provided in a document that is not yet available; as such, we cannot trace the logic in these tables or the decisions based on them.

We returned to the Draft Practical Alternative Evaluation Working Paper-Natural Heritage to review the "Simple Additive Weighting". Generally, in additive weighting, results can be seriously skewed depending on the significance assigned to each factor and this is particularly true if "size" is used as a multiplier within the computation; size then tends to outweigh most other factors.

The scoring system appears largely based on size of a unit (i.e. size is used as a multiplier), which means a "highly significant" corridor of "small size" can result in a score or weight that does not reflect its ecological importance or the impact of its removal or disturbance. Similarly, if a very large vegetative unit of low quality (from a vegetation perspective) that has high number of other species (animals, amphibians etc.) the score may not necessarily reflect its importance from a habitat perspective.

It should be noted, that this is a weakness of the additive weighting method of assessment. To clarify, the assignments of weights to indicators and criteria are critical in the development of this method. It is unclear whether these have yet been sufficiently refined to provide a true

reflection of difference between alternatives at the Area of Continued Analysis level. We are unclear whether appropriate weights have been given to the natural heritage feature as they it appears that they are largely based on the size of the unit.

The authors indicate that the assignment of significance was assessed based on professional judgment and application of the principles of Landscape Ecology. These assignments should be provided to review. Specifically, we hope to see a more detailed / stronger summary of the data presented in Appendix J of the working paper as it would allow reviewers to comment on the methodology as applied; as well more clarity is sought for section 2.4.2.

For example, in section 2.4.2.1 of the Draft Working Paper, three types of landscapes units were described/ recognized: patch, corridor and matrix, further in the same section "significance" were assigned based on criteria defined. However, the matrix, corridors and patches are not identified anywhere in the report so that they can be reviewed and the assignment of "significance" factors based on landscape ecology judged.

Section 8, Exhibit 8.3
On this Exhibit, Plaza CC7 is located on the west side of Sandwich Street; while on Exhibit 6.3B, Plaza CC7 is shown on the east side of Sandwich Street.

Section 10.4.2 – Wildlife and Wildlife Habitat
Clarification is sought as to whether impacts to Golden-winged Warbler and Red-Headed Woodpecker or their habitat are anticipated. Although these species were not observed during surveys in the last season, suitable and recently used habitats should be identified, protected and mitigated.

We recommend the following change: a significant quantity of SAR habitat will be lost, not may be lost.
Prior to the identification of any mitigation measures, it should be clarified whether the Butler's Gartersnake and Eastern Foxsnake populations in these localized pockets will remain stable. It is noted that since faunal surveys are still ongoing, impact assessments and mitigation measures will need to incorporate future findings as well as better address existing information.

The proposed relocation of snakes and other fauna from the project area should not be referred to as protection or mitigation measures since they do not avoid or alleviate impacts.

The final EAR should provide more detail on the methodology of any "wildlife salvage" approach, since some species are legally protected and/or subject to animal care protocols.

Mitigation statements such as "where feasible" or "where practical" do not provide support that a reasonably comprehensive analysis of project needs and environmental needs has been conducted. Detailed mitigation measures should be a requirement of this report as it has direct bearing the selection of the TEPA.

We look forward to seeing detailed mitigation plans and species-specific management plans as they are developed and in preparation of the ESA 2007 permit application. When developing these detailed plans, we recommend the following be considered:

- Additional documentation as to why natural heritage values cannot be avoided.
- Faunal mitigation measures, such as strategies to avoid/reduce snake and bird mortality, need to be identified in the final EAR so that design, construction and

mitigation options can be considered that may influence the preferred and approved locations of the project features. Specifically:
  - Restoration efforts will need to include specific barrier designs to reduce road mortality of local reptile populations.
  - Additional information should be provided to substantiate that impacts to snakes can be mitigated through fencing, berming or light shielding.
  - To maximize the chance of survival of faunal populations, habitats proposed to be restored must be created and in a functional state prior to the alteration of existing features.
- If suitable vegetation communities are restored, further clarity / analysis is needed to determine if other impacts such as road mortality, habitat fragmentation and trail creation will hinder the success of enhancement or replacement efforts.
- The high number of species at risk and other natural heritage values within the project area combined with the complexity of the site warrant completion of related surveys and development of additional mitigation measures.

The term 'compensate' is used in the report in regard to anticipated habitat losses. It should be noted that *compensation* does not necessarily equal *mitigation* nor *overall benefit* with respect to impacts, and that sufficient information on the location, type and amount of habitat needed to adequately compensate for potential losses has not been provided.

It is our understanding that the recommended plaza area has not been examined to determine the presence of habitat for Eastern Foxsnake although the species is known to occur in the AOI. We recommend that further analysis be undertaken to identify its habitat needs, including identification of landscape connectivity. For example, we believe that area of Plaza B may be very good habitat to supply many of the Eastern Foxsnake's ecological needs.

For the Plaza Area, we seek clarification on the nature of the landscaping and setbacks to be implemented for mitigation; specifically, more detail is needed to demonstrate these activities will adequately protect the original functions of the site.

Section 10.4.3, Vegetation and Vegetation Communities
On page10-15, we suggest that the word "planted" in front of Common Hoptree and Dwarf Hackberry be removed.

We appreciate that the Floristic Quality Assessment (FQA) approach has been used to further refine the significance of vegetation communities. It is unclear, however, how the information from the FQA were incorporated in the determination of low, medium and high values of the vegetation community.

Please consider an additional analysis where the author overlay the faunal values, including an appropriate evaluation of habitat for the SAR ecological function, to come up with an overall value based on all SAR.

Clarification is sought regarding the statement that there are no rare vascular plants in the right of way; also clarify the term rare in this section.

It is already known that construction *will* result in loss of vegetation communities, as such replace *may* with *will*. Specific impacts should be sighted consistently throughout this section since the conclusion states "a total of approximately 100 ha of vegetation communities will be removed…" On page 10-16, clarify compensation for the 100 hectares.

The test of overall net benefit to vegetation communities and SAR populations has not been supported in this Draft EAR. Instead, we recommend that the author state that the goal is to achieve a net overall benefit or provide additional supporting information.

Please consider the following in the development of the detailed mitigation plans:
- Consideration of avoidance alternatives. Avoidance, in this context, is to the species.
- Related plans and feasibility assessments for restoration/mitigation activities must be completed. These plans must be scientifically defensible and include criteria to determine effectiveness.
- Further avoidance through adjustments to design and site plans should be considered.
- Transplanting or transporting of species at risk, particularly regulated species, can not be considered an option until detailed translocation and/or habitat restoration plans are in place to ensure individuals are moved to areas with appropriate site conditions.
- Information is reflected appropriately in the landscape plan.

The term "minimized to the extent possible" is used, see previous comments in wildlife section.

The prairie communities will require regular fire to remain functional. Confirm whether the use of fire in proximity to the proposed TEPA is a viable alternative to maintain these vegetation communities. Prescribed burning should occur as ecologically appropriate for the site and related vegetation community, not necessarily "as frequently as possible". Criteria should be established to monitor the natural areas.

Section 10.4.4, Molluscs and Insects
Tallgrass and oak savanna communities are generally known to support a significant diversity of insects, including provincially rare species. There is not sufficient information provided to demonstrate no significant adverse effects to Monarchs or other significant species that may be present.

Section 10.4.5, Fish and Fish Habitat
We note that fish locks have been introduced to mitigate the potential effects to fisheries at both Cahill Drain and Lennon Drain. Please confirm which DFO/MTO/MNR fisheries protocol is being applied to this project. Based on the response, we may request further discussion on fish locks and their effectiveness; as well as ensuring adequate information is provided within the final EAR.

We note that Cahill Drain passage under highway 3 has been identified as a wildlife corridor of "note". This wildlife corridor is proposed to be eliminate; please confirm whether further mitigation is anticipated.

Section 10.4.6, Designated Natural Areas
The stormwater management ponds along the south boundary of the proposed B-1 plaza location should be redesigned or repositioned to prevent encroachment in the Black Oak Woods feature.

Section 10.4.7, Landscape Plan
Please consider incorporating additional details regarding the landscape plan. Specifically, we are seeking clarity that the landscape plan will incorporate protection and / or mitigation measures determined to benefit ecological and species at risk benefits.

Section 10.5, Summary of Environmental Effects and Mitigation
We have the similar concerns as above for specific feature types and related recommendations. Generally, there is not sufficient information provided to demonstrate recommended activities represent adequate mitigation.

Section 10.6.3 Natural Environment
There are several information gaps in the data, impact analysis and specific mitigation recommendations in the environmental assessment.

Section 11, Commitment to Consultation, Compliance Monitoring and Permits/ Approvals
Page 11-1: To be accurate, please reference section 17 of the ESA 2007, not the permit class. A permit under s.17 of the ESA 2007 is required for this project to move ahead. A 17(2)d permit is not required - applying for a 17(2)d permit is the Ministry of Transportation's decision.

Comments on Draft Natural Heritage Work Plan
We also took the opportunity to review the Draft Natural Heritage Work Plan and we would like to offer the following comments:

Section 2.4: The strategy of avoiding areas of species at risk "where feasible" may not be considered an appropriate approach considering there are species regulated under provincial legislation in the project area.

Section 5.5: We suggest that consideration be given to include a review of potential *indirect* impacts in addition to direct impacts. Indirect impacts (e.g. trail development) are likely to occur in this type of project environment and in relation to the types of restoration work being proposed. It is important that other uses within restored and linkage areas are compatible with the natural heritage mitigation functions for which these areas have been identified. Impacts should be broken down to site design/footprint overlaps, construction phase impacts and operation phase impacts.

Thanks for the opportunity to provide comments.

Sincerely,

Original signed by:

Daraleigh Irving
District Planner
Aylmer District

c. MNR: D. Richards, A. Woodliffe, P. Hache, M. Cairns, J. Manocha, T. Marchand, R. Gould, R. Rybansky, D. Elliott, K. Yaraskavitch, R. Drouin, A. Lawson; R. St. Martin.
MTO: Joel Foster