



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION

FLORIA J. JEFF
DIRECTOR

HAS NO INTEREST IN:

PROJECT #005 Detroit River (EIS)

MURRAY COV
SUMMER COHEN/THPO/NAGPRA

DATE

8-29-05

Susan LaFerner
Keweenaw Bay Indian Community
107 Beartown Road
Baraga, Michigan 49908

Dear : Ms. LaFerner

The enclosed scoping document provides project background, describes the illustrative alternatives under consideration, and summarizes the issues and public involvement activities to date on the Detroit River International Crossing (DRIC) Study. As part of the early coordination and scoping process, the project team is seeking input from interested agencies as well as the general public. We are asking for comments on this project as it relates to specific areas of concern, acceptable methodologies for impact assessment, and mitigation/permitting requirements which may be necessary for project implementation.

The Michigan Department of Transportation (MDOT) has started preparing a Draft Environmental Impact Statement (DEIS) for a new or expanded Detroit River crossing, plaza, and associated roadway connections in the Detroit-Windsor metropolitan areas of Wayne County, Michigan and Ontario, Canada. The DRIC study is a bi-national effort to identify solutions that support the regional, state, provincial, and national economies while addressing civil and national defense and homeland security needs of the busiest trade corridor between Canada and the United States.

The Border Transportation Partnership provides high-level sponsorship for this study and includes the Federal Highway Administration (FHWA), MDOT, the Ontario Ministry of Transportation, and Transport Canada. The Partnership conducted a Feasibility Study in 2003-2004 (material available at www.partnershipborderstudy.com), which provided the foundation for the current study.

FHWA has identified the following federal cooperating agencies, including:

- U. S. Army Corps of Engineers
- U. S. Department of Homeland Security (Customs and Border Protection)
- U. S. Coast Guard
- U.S. Fish and Wildlife Service
- U.S. General Services Administration
- U. S. Department of State
- U.S. Environmental Protection Agency

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LH-LAN-0 (01/03)



AMBASSADOR BRIDGE

DETROIT INTERNATIONAL BRIDGE COMPANYP. O. BOX 32665 *Detroit, Michigan 48232*

September 9, 2005

Mr. Mohammed S. Alghurabi
DRIC Project Manager
Michigan Department of Transportation
Bureau of Transportation Planning
425. W. Ottawa Street
P.O. Box 30050
Lansing, Michigan 48909

Dear Mohammed,

The Scoping Information document dated July 2005 that was distributed at the DRIC Scoping meeting in Cobo Hall on August 31, 2005 continues to perpetuate a grievous error that we had hoped would be rectified as you re-examined your traffic projections for the Ambassador Bridge.

First, the graph listed as Figure 2 on page 7 of the Scoping document is, in our opinion, wrong on two counts. We do not believe that your projections are justifiable. From comments by many at the Scoping meeting that view seems to be shared widely. But we will address this issue when you release the report that identifies the actual numbers represented on this graph as well as the methodology that produced them.

Second, we believe that your representation of the "Crossing Capacity (Traffic Breaks Down)" of the combined Detroit River crossings is grossly inaccurate. In the "Existing and Future Travel Demand – Working Paper" dated January 2004 and prepared by IBI Group for URS Canada it is stated on page 182 that the "peak hour capacity is estimated to be 1,750 PCE/hour/lane for the Ambassador Bridge." This means that the peak hour capacity for the four-lane bridge would be 7,000 PCE/hour/lane.

DETROIT INTERNATIONAL BRIDGE COMPANY

Yet Figure 2, claiming to represent both the bridge and the tunnel, indicates a crossing capacity of just 5,000 PCE/hour. At this level you claim that the bridge fails somewhere between 2015 and 2033. Yet even excluding the capacity of the tunnel, a bridge capacity of 7,000 PCE/hour would mean that the crossing capacity of the Ambassador Bridge exceeds even your "high growth" projection of the traffic demand in 2035, the horizon year of your study.

Please provide some explanation for this at your earliest convenience.

Sincerely,



Dan Stamper

cc: Governor Granholm
Gloria Jeff
Dave Wake
Joseph C. Corradino
Carmine Palombo
Bob Parsons

** TOTAL PAGE.03 **



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



STEVEN E. CHESTER
DIRECTOR

September 14, 2005

Ms. Margaret Barondess, Manager
Environmental Section
Project Planning Division
Michigan Department of Transportation
P.O. Box 30050
Lansing, Michigan 48909

Dear Ms. Barondess:

**SUBJECT: Scoping Document- Detroit River International Crossing Study
Wayne County, Michigan, Ontario, Canada**

Thank you for the opportunity to review the July 2005, scoping document for the Detroit River International Crossing (DRIC) Study that we received on August 1, 2005. The purpose of the study is to consider transportation alternatives that will improve the border crossing facilities, operations, and connections to meet existing and future mobility needs between Canada and Michigan (for the foreseeable future, i.e., at least 30 years). The stated purpose of the DRIC project is to:

- Provide safe, efficient and secure movement of people and goods across the Canadian-U.S. border in the Detroit River area to support the economies of Michigan, Ontario, Canada and the U.S.
- Support the mobility needs of national and civil defense to protect the homeland.

In order to meet these goals the DRIC study indicates that there is a need to:

- Provide new border crossing capacity to meet increased long-term demand.
- Improve system connectivity to enhance the seamless flow of people and goods.
- Improve operations and processing capability.
- Provide reasonable and secure crossing options in the event of incidents, maintenance, congestion, or other disruptions.

The DRIC study identifies three broad areas where a new crossing could be located. These three areas are identified as:

- Downriver Study Area- includes all or parts of the communities of Wyandotte, Riverview, Southgate, Trenton, Grosse Ile, Romulus, and Brownstown Township. Approximately 10 alternatives will initially be evaluated within this area.

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- Central Study Area- includes Lincoln Park, Ecorse, River Rouge and part of Detroit. Approximately 10 alternatives will initially be evaluated within this area.
- Belle Isle Study Area- includes the City of Detroit. Approximately 2 alternatives will be evaluated within this area.

As part of the alternative evaluation, plaza locations will also have to be identified in both Michigan and Canada to tie into any proposed crossing.

We have the following comments concerning the scoping study and the information provided at the August 31, 2005, resource meeting that was held at Cobo Hall.

- 1) The following permits or statutory considerations will be required from the Michigan Department of Environmental Quality (MDEQ).
 - a) A National Pollution Discharge Elimination System (NPDES) for storm water discharges associated with construction activities in accordance with Rule 2190 promulgated in accordance with Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA).
 - b) Part 91, Soil Erosion and Sedimentation Control, of the NREPA. Part 91 permits are generally issued by the county or in some instances a municipality. Two exceptions to the above are: 1) if the earth change involves two or more Part 91 permitting entities, the MDEQ issues the Part 91 permit; and 2) if the project is undertaken by the Michigan Department of Transportation (MDOT), the MDOT may undertake the project without obtaining a Part 91 permit if it follows MDEQ approved procedures that are consistent with Part 91 requirements.
 - c) Part 301, Inland Lakes and Streams, of the NREPA.
 - d) The Floodplain Regulatory Authority found in Part 31, Water Resources Protection, of the NREPA.
 - e) Part 303, Wetlands Protection, of the NREPA.
 - f) A permit under Part 625, Mineral Wells, of the NREPA may be required if the project requires the re-plugging of an abandoned solution mining well.
 - g) In addition, Land and Water Management Division staff review projects for consistency with Michigan's Coastal Management Program (MCMP), as required by Section 307 of the Coastal Zone Management Act, PL 92-583, as amended (CZMA). The proposed bridge crossing project is within Michigan's coastal zone management boundary, and as such is subject to consistency requirements. A determination of consistency with the MCMP requires evaluation of a project to determine if it will have an adverse impact on coastal land or water uses or coastal resources. Projects are evaluated using the permitting criteria contained in the regulatory statutes administered by the MDEQ. These statutes constitute the enforceable policies of the Coastal Management Program. Provided no valid objections based on valid

environmental concerns are received during the public notice period and all required permits are issued and complied with, and no adverse impacts to coastal resources are anticipated. Upon issuance of all necessary permits, this project will be consistent with MCMP.

- 2) The MDEQ is concerned about the high air pollution levels in the Southeast Michigan area, within which all proposed crossing areas are located. In addition, MDEQ has an obligation under the federal Clean Air Act to bring the Southeast Michigan area into attainment with the National Ambient Air Quality Standards (NAAQS) for fine particulate matter (known as PM-2.5) and ozone. The proposed crossing locations are within designated non-attainment areas for these pollutants and changes in air pollutant emissions associated with increased traffic, different crossing locations, and other impacts of Detroit River crossings are important factors in our analysis of necessary measures to attain the PM-2.5 and ozone NAAQS. Please keep the MDEQ Air Quality Division abreast on the status of the DRIC project and provide information concerning air quality analysis and mitigation of air quality impacts as the project proceeds.
- 3) The MDEQ's Remediation and Redevelopment Division and Waste and Hazardous Materials Division Warren office should be contacted for information on contaminated and hazardous sites.
- 4) There are potential environmental concerns with each of the three selected corridors which will require a thorough evaluation.
 - a) Downriver Study Area- The northern tip of Grosse Ile, known as Pt. Hennepin, is owned by the BASF Corporation. This area is contaminated due to waste disposal and has very poor soil conditions with a high PH. BASF has objected in the past to any proposed pier construction on Pt. Hennepin. There are abandoned brine wells off shore that must be considered and has potentially contaminated river sediments. High quality coastal wetlands exist near and along Pt. Hennepin and a high quality Walleye fishery exists along this entire area of the Detroit River.

Some of the inland areas associated with these proposed alternatives have significant areas of wetland including Lakeplain Prairie (LLP) areas. Some of the most important LLP areas are found in the vicinity of Telegraph Road on the north and south side of King Road and also on Sibley Road west of Telegraph Road.
 - b) Central Study Area- This area also contains walleye fishing, contaminated sediment and Sturgeon spawning which is a threatened species.
 - c) Belle Isle Area- Belle Isle has some of the last remaining bottomland forested wetland along the Detroit River. This is a high quality wetland which contains the state threatened species, Pumpkin Ash. The state threatened Eastern Fox snake is also found on the island. Several species of federally threatened and endangered mussel species may be present in this area. A significant Walleye fishery can also be found in this area.

- 5) Section 3.1 the second paragraph says 95% of the person trips are road based as shown in Table 2. It is not clear in Table 2 how the 95% is derived.
- 6) Section 5.3, the third paragraph indicates that earlier studies indicated that road based solutions outside of the Detroit River area do not meet the project's purpose and need as they did not divert enough traffic from the Detroit River area. This study should be referenced in the Draft Environmental Impact Statement and be made available upon request.

We may have additional comments as the study proceeds and more information becomes available as to the potential environmental impacts. If you have any questions please contact Mr. Alex Sanchez at 517-335-3473 or you may contact me.

Sincerely,



Gerald W. Fulcher, Jr., P.E., Chief
Transportation and Flood Hazard Unit
Land and Water Management Division
517-335-3172

cc: Mr. John Konik, USACE
Ms. Sherry Kamke, USEPA
Mr. Craig Czamecki, USFWS
Mr. Abdel Abdella, USFHA
Ms. Mary Vanderlaan, MDEQ
Ms. Teresa Seidel, MDEQ
Mr. Ben Okwumabue, MDEQ
Mr. Oladipo Oyinsan, MDEQ
Ms. Barb Rosenbaum, MDEQ
Mr. Chris Antieau, MDEQ
Mr. Alex Sanchez, MDEQ

 THE JOBS TUNNEL™
DETROIT RIVER TUNNEL PARTNERSHIP

September 28, 2005

Mohammed S. Alghurabi, Senior Project Manager
Michigan Department of Transportation
Bureau of Transportation Planning
425 W. Ottawa Street
P.O. Box 30050
Lansing, MI 48909

Dear Mohammed:

After reviewing the Detroit River International Crossing Study's Draft Environmental Statement/Scoping Document dated July 2005, the Detroit River Tunnel Partnership (DRTP) is pleased to submit the following comments. The DRTP asks that these comments be considered and that they be incorporated into this Scoping Document. You, your MDOT team, and your consultants are to be congratulated for the data and engineering focus of the report.

Regarding the document, some of the new ideas are excellent and have not been so clearly stated in other documents. These important ideas in the Scoping Document include: the reference to "solutions" in the second sentence, confirming that the recommendation from the Study may include more than one crossing; the need for governmental or public oversight of the next crossing (something the DRTP strongly agrees with); the emphasis on Homeland Security as a driving force; inclusion of the Canadian Senate Committee report quote about redundancy as key to the selection of the next crossing; and the emphasis on the need to look at existing and future crossings as a system.

The DRTP applauds the emphasis in several places on the pressing economic need for increased border-crossing capacity, and the table on page eight which suggests that the unstable nature of some elements of the current system could be reached in as soon as five years.

In addition, the DRTP believes you will not find any "fatal flaws" in The Jobs Tunnel project, or within The Jobs Tunnel transportation corridor should you explore your own crossing alternative that might use this corridor. You will be pleasantly surprised with the cost-effectiveness of our project and corridor because the Detroit River Tunnel Partnership already owns most of the land required in this corridor.

The comments to the Scoping Document have been organized by document section with page number(s). Two types of comments are respectfully presented: 1) areas that need clarification and 2) areas that need further analysis. These comments follow in the chart on the next page.

In addition, please find comments on the purpose and need statements contained in the Scoping Document. These comments provide an analysis on how The Jobs Tunnel and The Jobs Tunnel transportation corridor fulfill these purposes and needs.

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Page 2

Comments on the DRICS Scoping Document		
Section/Page	Areas for clarification	Areas for additional analysis
Section 2.0, page 3	In the first sentence, there is a reference to the foreseeable future being 30 years. Please clarify the start date. Thirty years from 2000? 2005?	No comment
Section 2.1, page 3	The first bullet refers to a river crossing. For consistency with the first page of the document, shouldn't it be crossings?	No comment
Section 3.0, page 6	<ul style="list-style-type: none"> a. The reference to "at least 30 years" is here again. b. In the first bullet in the needs list, the reference to "long-term demand" needs to be clarified. Can you supply numbers to this statement? c. The last bullet in that same list refers to "reasonable and secure crossing options." Are you talking about redundancy here and if so, why not use the word? See comment on section 3.2. 	No comment
Section 3.1, pages 7 and 8	<ul style="list-style-type: none"> a. The top of page 7 refers to the "breakdown" of capacity at this border. This section should talk about the point at which this border crossing <u>could</u> become unstable. That may be as early as 2010. This is five years ahead of the "breakdown" and could make life very difficult for users and neighbors of the current crossings. b. On page 8 in the second bulleted point, the first word should be "Lost" not "Increased." 	No comment

Comments on the DRICS Scoping Document		
Section/Page	Areas for Clarification	Areas for additional analysis
Section 3.2, page 9	This section should cite redundancy as an important security criterion for selection of the next crossing	No comment
Section 5.2.1, page 22	There is no illustration of a soft ground bored tunnel. Such a cross-sectional drawing should be included. If you need a good cross-sectional drawing of such a tunnel, the DRTP can provide one.	No comment
Table 8, page 39	Overall this is a good chart. However, it is a little confusing with too many inside jargon/technical terms being used. The language in the chart should be a little easier to understand for the lay person.	This chart does not seem to address speed of construction. How fast could the lands be acquired and the project completed? This needs to be addressed in this chart as part of the selection criteria.

This should help with your Scoping Document and your evaluation process. If you would like to discuss any of the items mentioned in this letter, let's meet at your convenience.

Again, congratulations on an outstanding draft document.

Sincerely,


 Marge Byington
 Detroit River Tunnel Partnership

Enc.

cc: Mr. Dave Wake, Windsor Projects Coordinator, Ministry of Transportation, Environmental Unit, Mr. James J. Steele, Administrative Director, Michigan Federal Highway Administration, and Ms. Gloria Jeff, Director, Michigan Department of Transportation

Detroit River International Crossing Study

Scoping Document

The Jobs Tunnel Corridor Correlation with Project Purpose and Need

This document highlights the reasons why The Jobs Tunnel and its transportation corridor should be considered as viable alternatives for the next phase of the Detroit River International Crossing Study.

The Scoping Document for the Detroit River International Crossing Study (DRIC) lists two project purposes and four project needs. They are listed below:

Project Purpose

- 1. Provide safe, efficient and secure movement of people and goods across the Canadian-U.S. border in the Detroit River area to support the economies of Michigan, Ontario, Canada and the U.S.**
- 2. Support the mobility needs of national and civil defense to protect the homeland.**

Project Need

- 1. Provide new border-crossing capacity to meet increased long-term demand;**
- 2. Improve system connectivity to enhance the seamless flow of people and goods;**
- 3. Improve operations and processing capability; and,**
- 4. Provide reasonable and secure crossing options in the event of incidents, maintenance, congestion, or other disruptions.**

Overview

The Jobs Tunnel and its direct corridor have many advantages. The Jobs Tunnel corridor has existing transportation infrastructure that can be reused, the twin tube rail tunnel, a direct transportation corridor connecting the 401 in Windsor, ON and I-75/I-96 in Detroit, Michigan, as well as 207 acres for related transportation infrastructure. Other infrastructure can be constructed in a creative and flexible manner that will meet all the DRIC purpose and need statements listed in the Scoping Document. The Jobs Tunnel project, with its existing flexible transportation corridor, can be broadened to meet a variety of infrastructure elements. Because it's already an active transportation corridor, it lets transportation planners design a variety of optimum crossings that meet current and future transportation needs of this region.

Each of the two project purposes and four project needs is presented below with a brief description of how The Jobs Tunnel project and its transportation corridor fit the purpose or need.

Project Purpose:

1. **Provide safe, efficient and secure movement of people and goods across the Canadian-U.S. border in the Detroit River area to support the economies of Michigan, Ontario, Canada and the U.S.**

The Jobs Tunnel project and its flexible transportation corridor will provide a redundant crossing with additional traffic lanes at the Detroit-Windsor border crossing. These new traffic lanes within The Jobs Tunnel corridor will be designed to provide for the free flow of commercial trucks, trains and other vehicles, thus bringing economic stability to the region. With the free-flow of commercial trucks come reliable just-in-time deliveries that are demanded by so many automotive plants in this region.

The Jobs Tunnel transportation corridor offers a direct link between Highway 401 and Interstate 75 with indirect access to I-75 right now. As stated in the DRIC *Illustrative Alternatives on U.S. Side of the Border* document dated August 2005, on the U.S. side, trucks will also have "access to I-75/I-96 via the existing rail line right-of-way in conjunction with the Gateway Plaza design" currently under construction. This alignment maximizes the value of public funds committed in the Gateway Plaza project. A study by Transportation and Economics Management System, Inc. (TEMS), a leading transportation consulting firm with extensive Windsor and worldwide experience, stated in August 2004 that The Jobs Tunnel will eliminate 75 million hours of truck delays and save consumer and industry over \$3 billion in fuel and time savings over the next 30 years.

On the Canadian side, four at-grade railroad crossings will be eliminated with grade separations to provide more safety along the corridor as well as easing traffic movement in the City of Windsor.

2. **Support the mobility needs of national and civil defense to protect the homeland.**

The Jobs Tunnel project and its flexible transportation corridor will provide a redundant crossing for Detroit and Windsor. By constructing this redundant crossing safely away from the existing bridge and tunnel crossings, homeland security will be improved.

The pairing of The Jobs Tunnel transportation corridor and the existing Ambassador Bridge provides optimal protection against a terrorist threat. Aside from the redundancy provided, with its possible multiple tunnels, The Jobs Tunnel transportation corridor presents a completely different method of crossing the border.

In addition, this corridor offers a unique opportunity to create a state-of-the-art security system on both sides of the border that meets the needs of homeland security. Homeland security will be enhanced through a security scheme that is designed from the ground up, using the latest high-tech equipment.

Project Need:

1. Provide new border-crossing capacity to meet increased long-term demand.

Currently, commercial traffic is causing most of the congestion at the border. The Jobs Tunnel effectively doubles the capacity of the border crossing, with the addition of one more truck lane in each direction (along with appropriately-sized support services, such as U.S. and Canadian Customs plazas). This will eliminate the congestion. In addition, the construction of a high-clearance rail tunnel facilitates the diversion of commercial goods from truck to rail, further easing pressure at this border and provides much needed new, high-tech rail services between Ontario and Michigan.

From a design perspective, The Jobs Tunnel corridor can accommodate more than two lanes. If further border capacity is deemed necessary, DRIC should feel comfortable in being creative in using the flexibility and the assets that The Jobs Tunnel transportation corridor provides.

2. Improve system connectivity to enhance the seamless flow of people and goods.

The Jobs Tunnel transportation corridor offers a direct link between Highway 401 and Interstate 75 with indirect access to I-75 right now. As stated in the DRIC *Illustrative Alternatives on U.S. Side of the Border* document dated August 2005, on the U.S. side, trucks will also have "access to I-75/I-96 via the existing rail line right-of-way in conjunction with the Gateway Plaza design" currently under construction. This alignment maximizes the value of public funds committed in the Gateway Plaza project. Transportation and Economics Management System, Inc. (TEMS), a leading transportation consulting firm with extensive Windsor and worldwide experience, stated in an August 2004 study that 75 million hours of truck delays will be eliminated by The Jobs Tunnel project.

Direct, non-circuitous highway connections with seamless supporting operations will yield a reduction in transportation costs, time and fuel consumption. The Jobs Tunnel transportation corridor meets this challenge well. In addition, the combination of a tunnel system and the Ambassador Bridge in the same vicinity enhances reliability from two perspectives. First, daily reliability is assured by reduced congestion. Second, long-term reliability is assured with redundant, complementary facilities. Maintenance opportunities and security enhancement assure the continued flow of goods. A secondary benefit is the increased confidence private industry will have to locate or keep facilities in a reliable, congestion-free transportation environment.

The Jobs Tunnel and its corridor are self-contained. They do not use any local roads.

In addition, truck traffic would enter the corridor from Highway 401 or I-75 directly, bypassing any local roads such as Fort Street, Talbot Road, Huron Church Road, Wyandotte Street and EC Row.

Project Need: (continued)

3. Improve operations and processing capability.

The vision for The Jobs Tunnel transportation corridor includes: electronic tolling and an ITS system interconnecting all of the Detroit-Windsor crossings, which include the Ambassador Bridge, the Detroit-Windsor Vehicular Tunnel, the Blue Water Bridge and the ferry crossings. With this system, incident management for each facility can be interconnected. Drivers can be alerted of delays and can choose to use another crossing before waiting in a queue. With regard to congestion, see response to primary objective one.

The Jobs Tunnel will have an incident management strategy that meets or exceeds all regulatory requirements. Emergency response vehicles will be on either side of the portal. Using proven techniques, operators will be able to access and address any incident quickly.

4. Provide reasonable and secure crossing options in the event of incidents, maintenance, congestion, or other disruptions.

The Jobs Tunnel transportation corridor meets this challenge well. The combination of a tunnel system and the Ambassador Bridge in the same vicinity enhances reliability from two perspectives. First, daily reliability is assured by reduced congestion. Second, long-term reliability is assured with redundant, complementary facilities. Maintenance opportunities and security enhancement assure the continued flow of goods. A secondary benefit is the increased confidence private industry will have to locate facilities in a reliable, congestion-free transportation environment.

Additional Benefits of the Corridor

Any construction within The Jobs Tunnel transportation corridor will meet or exceed all applicable governmental standards. Tunneling will begin well back from the river's edge on both sides of the border thus keep the riverfront open for development. In addition, tunneling will not disturb the river bottom making these operations environmentally sound.

In addition to the positive environmental benefits, additional mitigation efforts such as berming and greening are expected to minimize any potential impacts while maximizing quality of life. The Jobs Tunnel and its corridor do not touch or disturb any Areas of Natural and Scientific Interest or any other environmentally-protected land.

Summary

In summary, The Jobs Tunnel and its transportation corridor meet all of the Purpose and Need statements as listed in the Scoping Document of the DIRC Study. The Jobs Tunnel and its corridor have the flexibility to meet rail, truck and other transportation needs. It reuses existing infrastructure and is a cost-effective, efficient border-crossing solution.



IN REPLY REFER TO:

United States Department of the Interior

FISH AND WILDLIFE SERVICE
East Lansing Field Office (ES)
2651 Coolidge Road, Suite 101
East Lansing, Michigan 48823-6316

September 30, 2005

Ms. Margaret Barondess, Manager
Environmental Section
Project Planning Division
Michigan Department of Transportation
P.O. Box 30050
Lansing, Michigan 48909

Re: Detroit River International Crossing (DRIC) Study, Wayne County, Michigan

Dear Ms. Barondess:

We are responding to your letter of July 29, 2005, requesting our comments at this stage of early coordination for the above referenced project. We provide these comments under the authority of the Fish and Wildlife Coordination and the Endangered Species Act of 1973, as amended (Act), and in accordance with the intent of National Environmental Policy Act of 1969, as amended (NEPA).

We understand the Michigan Department of Transportation (MDOT) is preparing a Draft Environmental Impact Statement (DEIS) for a new or expanded Detroit River crossing, plaza and associated roadway connections in the Detroit-Windsor metropolitan areas of Wayne County, Michigan and Ontario, Canada. The July 2005 Scoping Information document that accompanied your letter identifies three broad areas under study for a new crossing: the Downriver Study Area, Central Study Area and Belle Isle Study Area.

The U.S. Fish and Wildlife Service (FWS) is a cooperating agency, as defined in NEPA, with the Federal Highway Administration (FHWA) in the development of an Environmental Impact Statement (EIS) for the DRIC study. We offer the following concerns for consideration and evaluation in the DEIS.

Detroit River International Wildlife Refuge

As shown in the Scoping Information document, the Downriver Study Area crosses the boundaries of the Detroit River International Wildlife Refuge (IWR). We have enclosed a refuge map, which indicates the properties either owned by FWS or under conservation easement as part of the Detroit River IWR. We have considerable concerns that a new crossing, particularly a bridge crossing, may impact lands over which the FWS has jurisdiction by law. The DEIS should evaluate not only the direct effects of usage of refuge lands for bridge piers and other

structures, but also the indirect effects that locating a crossing near the refuge would have on wildlife and the wildlife-dependent public uses (e.g., birding, hunting, fishing, etc.) that the refuge provides.

Migratory Birds

The Detroit River area provides important habitat for migratory birds. *The Atlas of Breeding Birds of Michigan* (1991) identifies 128 species of birds nesting in Wayne County. Habitat for a variety of birds, including waterfowl, shorebirds, waterbirds, and songbirds, occurs within all three study areas as well as on areas managed for wildlife adjacent to the study areas, such as Stoney Island and Calf Island. In addition, the river corridor is a major migration route for waterfowl, hawks and songbirds. In particular, thousands of canvasbacks and redheads are known to occur on the river throughout the fall and winter. Essential habitat for these waterfowl occurs around Grosse Ile (Hennepin Marsh) and Mud Island, both of which occurs within the Downriver Study Area. Common terns (*Sterna hirundo*) also nest at Grosse Ile. The common tern is listed by the State of Michigan as a threatened species. We have concerns that a new crossing would result in loss of habitat for migratory birds, direct mortality from collisions with a bridge crossing, and disruption of movements and behaviors due to increased noise and traffic.

As migratory birds are a federal trust resource, Executive Order 13186 and Director's Order No. 172 direct the FWS to coordinate with other federal agencies to promote the conservation of migratory birds and ensure that environmental analyses of federal actions evaluate the effects on migratory birds, with an emphasis on species of concern. Because the study areas provide nesting, resting and feeding habitat for a variety of migratory birds, including a State listed species, we recommend the DEIS include a full evaluation of potential impacts to migratory birds as well as mitigation measures such as avoiding alteration of important habitat areas, replacing lost habitat, and installing lighting systems on bridge structures to deter collisions.

Fisheries and Aquatic Resources

The lake sturgeon (*Acipenser fulvescens*), an interjurisdictional fishery resource that the FWS identifies as a species of concern, occurs in Detroit River. The lake sturgeon is also listed as a threatened species under Michigan state law. Endemic to the Great Lakes basin, lake sturgeon inhabit large river and lake systems. The lake sturgeon is a bottom-dwelling, warmwater species. Spawning occurs on clean, gravel shoals and stream rapids from April to June; Great Lakes populations are also known to spawn in wave action over rocky areas or ledges along shorelines and islands. Adult sturgeons habitually return to spawn in streams where they were born; after hatching, some young lake sturgeons have been observed to remain in their natal rivers for their first summer of life. The loss of spawning and nursery areas has contributed to the decline of this species.

Lake sturgeons are known to spawn around Zug Island, which is within the Central Study Area. In addition, the U.S. Geological Survey (USGS), in cooperation with other partners including the FWS, have created experimental lake sturgeon spawning habitat in Detroit River near the north end of Belle Isle. As the historic spawning habitat for lake sturgeon in Detroit River is significantly degraded, we have concerns about any additional loss or degradation of habitat. The DEIS should address how a new crossing may affect lake sturgeon spawning habitat and identify ways to avoid impacts.

We also have concerns about consequences to the larger fish community of Detroit River. The DEIS should evaluate the quality of the existing riverine habitat, assess how in-stream structures, such as bridge piers, may alter that habitat, and identify means, such as timing restrictions on in-stream construction, to minimize impacts to fisheries. In addition, we have concerns that a new crossing may release contaminants to the river. Contaminants already in the sediments may be released in the event of construction activities in the channel. Discharge of contaminants, for example oil, grease, metals and road salt, may result from traffic usage of a bridge alternative. The DEIS should assess how these contaminants may impact the aquatic resources of Detroit River and identify measures to mitigate these impacts.

Wetlands

Hennepin Marsh on Grosse Ile provides important habitat for a variety of fish and wildlife resources. We have serious concerns regarding potential impacts to this valuable resource. In addition, wetland habitat occurs on the north end of Belle Isle. Lakeplain prairie also occurs within the Downriver Study Area west of I-75 at Sibley Road and King Road. Lakeplain prairies are of high ecological importance due to their unique floristic character and species richness. Less than one percent of Michigan's historic lakeplain prairie remains today. Because of its plant diversity, landscape position and hydrologic cycle, lakeplain prairie is extremely difficult to recreate and thus is an irreplaceable resource. We recommend avoiding impacts to this rare community type.

Work that would impact wetlands may require a Michigan Department of Environmental Quality and/or U.S. Army Corps of Engineers permit for which this office would have review authority under the Fish and Wildlife Coordination Act. In the review of these permit applications, we may concur (with or without stipulations) or object to permit issuance depending upon whether specific construction practices may impact public trust fish and wildlife resources.

Endangered Species

In accordance with section 7 of the Act, we are notifying you that the northern riffleshell (*Epioblasma torulosa rangiana*), Indiana bat (*Myotis sodalis*) and eastern prairie fringed-orchid (*Platanthera leucophaea*) may occur within the identified study areas. The northern riffleshell and Indiana bat are federally listed as endangered; the eastern prairie fringed-orchid is federally listed as threatened. In addition, the rayed bean (*Villosa fabalis*), a federal candidate species, may also occur in the area.

The northern riffleshell and rayed bean are mussel species that historically occurred in Detroit River. Records for the northern riffleshell exist throughout all three study areas from Belle Isle south to Grosse Ile. The rayed bean is known from the area around Belle Isle. The northern riffleshell habitat consists of swift moving water with a fine or coarse gravel substrate. The rayed bean is found in shoal or riffle areas of streams or wave-washed areas of glacial lakes with a gravel or sand substrate. We recommend a qualified individual conduct surveys to determine the presence of these two species within the study areas. Although the Act does not extend protection to candidate species, we encourage their consideration in planning and development. Avoidance of unnecessary impacts to candidate species will reduce the likelihood that they will require the protection of the Act in the future.

Summering Indiana bats roost in trees in riparian, bottomland, and upland forests (refer to the enclosed attachment). Potential habitat for this species may occur in forested areas along Sibley and King Roads east of I-275. We recommend a qualified individual conduct a habitat survey to determine the suitability of this area for Indiana bats. Based upon the results of this habitat survey, mist net surveys to determine the presence of Indiana bats may be necessary.

The eastern prairie fringed-orchid occurs in the moist soils of lakeplain prairie and is adapted to its seasonal fluctuations of water levels. Our records indicate that the eastern prairie fringed-orchid is known from far southern Wayne County; however, we do not have a record for this species within the DRIC study areas. Individual orchid plants do not flower every year and may become dormant during unsuitable conditions; therefore, its presence in an area may be overlooked. Should the proposed project affect any lakeplain prairie habitat, we recommend a qualified individual conduct a survey to determine presence of this listed species.

Pursuant to section 7(a)(2) of the Act, you must determine whether your actions, including construction of a new river crossing, plazas and connecting roadways and/or upgrade of existing road connections, may affect federally listed species. Section 7(c) of the Act requires federal agencies or their designees to prepare a Biological Assessment (BA) for major construction projects. A major construction project means any major federal action which significantly affects the quality of the human environment, as referred to in NEPA, and requires preparation of an EIS. For your information, we have included Enclosure A, which outlines a federal agency's responsibilities under section 7 and provides guidance for the preparation of a BA and effects determination.

We appreciate the opportunity to provide comments at this early stage of project planning. Please refer any questions to Barbara Hosler of this office at 517/351-6326 or the above address.

Sincerely,



Craig A. Czarnecki
Field Supervisor

cc: FHWA, Lansing, MI (Attn: Jim Kirschensteiner)
FWS, Detroit River IWR, Grosse Ile, MI (Attn: John Hartig)
FWS, Alpena Fisheries Resource Office, Alpena, MI (Attn: Jerry McClain)
FWS, Twin Cities, MN (Attn: Lyn MacLean)
USEPA, Environmental Planning and Evaluation Branch, Chicago, IL (Attn: Sherry Kamke)
USACE, Regulatory Office, Detroit, MI (Attn: Gina Nathan)
USGS, Great Lakes Science Center, Ann Arbor, MI (Attn: Bruce Manny)
MDNR, Wildlife Division, Lansing, MI (Attn: Todd Hogrefe)
MDEQ, Land and Water Management Division, Lansing, MI (Attn: Alex Sanchez)

g: admin/archives/sept05/DRICearlycoordination.blh.doc

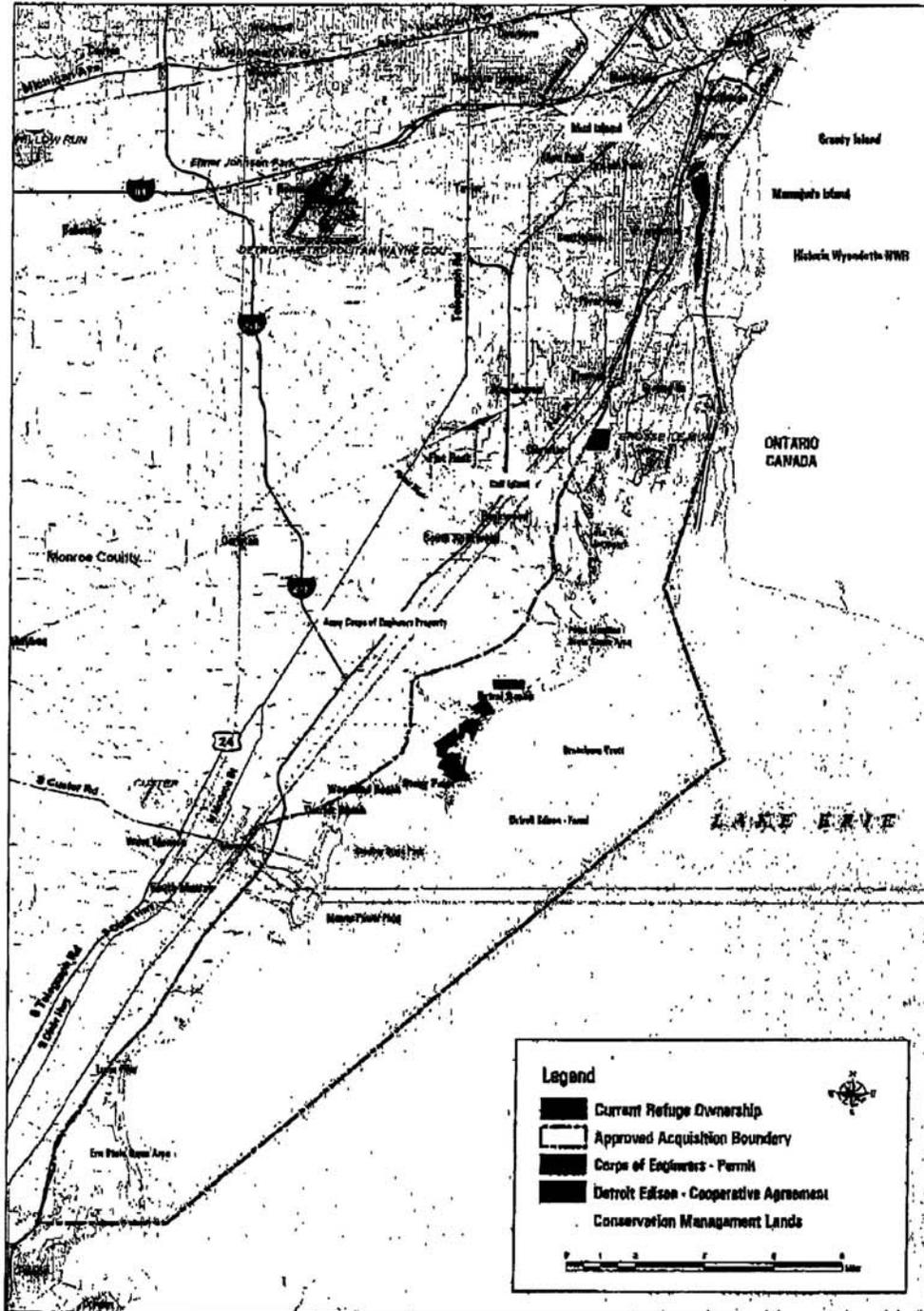


U.S. Fish and Wildlife Service

Detroit River International Wildlife Refuge

Water and Marine Crosses Mitigation

Local States



Indiana Bat Life History

Since listing as endangered in 1967, the range-wide Indiana bat population has declined by nearly 60%. Several factors have contributed to its decline including the loss and degradation of suitable hibernacula, human disturbance during hibernation, pesticides, fragmentation of forest habitat, and loss and degradation of forested habitat, particularly stands of large, mature trees.

In Michigan, summering Indiana bats roost in trees in riparian, bottomland, and upland forests from approximately April 15 to September 15. Indiana bats may summer in a wide range of habitats, from highly altered landscapes to intact forests. Roost trees are typically found in patches of forests of varying size and shape, but have also been found in pastures, hog lots, fence rows, and residential yards.



Indiana bat range in shaded areas.

Male Indiana bats are dispersed throughout the range in the summer, roosting individually or in small groups, but may favor areas near hibernaculum. In contrast, reproductive females form larger groups, referred to as maternity colonies. Female Indiana bats exhibit strong site fidelity to summer roosting and foraging areas, tending to return to the same summer range annually to bear their young. These traditional summer sites are essential to the reproductive success and persistence of local populations.

Indiana bats are known to use a wide variety of tree species for roosting, but structure (i.e., crevices or exfoliating bark) is probably most important in determining if a tree is a suitable roost site. Roost trees generally are dead, dying or live trees (e.g. shagbark hickory and oaks) with peeling or exfoliating bark which allows the bat to roost between the bark and bole of the tree, but Indiana bats will also use narrow cracks, split tree trunks and/or branches as roosting sites. Southern Michigan maternity roost trees are typically in open areas exposed to solar radiation. Roost trees vary considerably in size, but those used by Indiana bat maternity colonies usually are large relative to other trees nearby, typically greater than 9 inches dbh. Male Indiana bats have been observed roosting in trees as small as 3 inches dbh.

Maternity roosts of the Indiana bat can be described as "primary" or "alternate" based upon the proportion of bats in a colony consistently occupying the roost site. Maternity colonies typically use 10-20 different trees each year, but only 1-3 of these are primary roosts used by the majority of bats for some or all of the summer. It is not known how many alternate roosts must be available to assure retention of a colony within a particular area, but large, nearby forest tracts appear important. Although the Indiana bat appears to be adaptable to changes in its roosting habitat, it is essential that a variety of suitable roosting trees exist within a colony's summer area to assure the persistence of the colony.

**FEDERAL AGENCY RESPONSIBILITIES UNDER SECTION 7(a)(2) OF THE
ENDANGERED SPECIES ACT**

Section 7 of the Endangered Species Act of 1973, as amended (Act) directs Federal agencies in their responsibilities to listed species and critical habitat. Section 7(a)(2) of the Act directs all Federal agencies to consult with the FWS to ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of listed species or critical habitat. This process is referred to as "section 7 consultation."

Section 7 consultation is typically initiated by a Federal action agency (action agency) by requesting a list of proposed and listed species and critical habitat that may be present in the action area. Based on this list, the action agency must provide the FWS with an analysis and determination of the effects of proposed actions that *may affect* listed species or critical habitat. Actions that are *not likely to adversely affect* listed species and critical habitat require informal section 7 consultation, while actions that are *likely to adversely affect* listed species and critical habitat require formal section 7 consultation. All decisions made under section 7 require the FWS and action agencies to employ the best available scientific and commercial data in their analysis.

The action agency or its designee must assess the potential effects on listed species and critical habitat. The assessment is called a Biological Assessment (BA). By regulation, a BA is prepared for "major construction activities" as defined under the National Environmental Policy Act (NEPA). Although a BA is technically not required for "non-major" construction activities, the action agency must still supply the FWS with an analysis and determination of effects for all Federal actions that *may affect* listed species or critical habitat. The FWS uses the BA, along with any other available information, to decide if concurrence with the determination of effects as made by the action agency is warranted. The BA should be completed within 180 days after initiation of consultation. If work on the BA has not been initiated within 90 days of receipt of the species list, you should verify the accuracy of the species list with the FWS.

To complete the BA, the action agency or its designee should, at a minimum:

1. determine whether suitable habitat exists if the species is likely to be present, which may include an onsite inspection of the area to be affected by the proposal (should be documented in BA);
2. review literature and scientific data to determine species distribution, habitat needs, and other biological requirements;
3. consult experts including those within the FWS, state conservation departments, universities, and others who may have information not yet published in scientific literature;
4. review and analyze the effects of the proposal on the species in terms of individuals and populations present in the action area;
5. analyze alternative actions that may provide conservation measures;
6. make a determination of effects as directed by section 7 of the Act; and
7. prepare a report (the BA) documenting the analysis, including a discussion of study methods used, any problems encountered, and other relevant information.

Note that section 7(d) of the Act states action agencies shall not make any irreversible or irretrievable commitment of resources during the consultation process which would result in violation of the requirements under section 7(a)(2). Planning, design, and administrative actions may be taken; however, no irrevocable actions (e.g., construction) may begin.

We strongly encourage coordination with the FWS early and often in the consultation process. Not only will this save time by minimizing re-drafts of BAs, but we may also have the opportunity to work with the action agency in the development of a project that avoids or eliminates adverse effects before final decisions are made.

Example Outline of a Biological Assessment

A. Cover letter- Includes the purpose of the consultation, project title, and consultation number (if available). Indicate the listed species and critical habitat involved and the determination made for each (see below).

B. Action Area description- The action area is defined as the extent of the direct and indirect effects of the project. Describe all areas that may be impacted considering that, in some cases, the action area may not be contiguous or may reach beyond the immediate project footprint.

C. Project description- Describe the proposed action. Be detailed, specific, and quantify whenever possible. Describe any conservation measures included in the proposed action to minimize effects on listed species.

D. Species Analyses-

1. Affected environment (quantify whenever possible)
2. Species biology (this should constitute a relatively small portion of the document)
3. Current status of the species in the action area (include the effects of any past or ongoing actions)
4. Critical habitat (if applicable)
5. Effects of the proposed action on each species and critical habitat including direct and indirect, and effects of interrelated and interdependent actions.

E. Cumulative Effects- Includes the effects of all future state or private activities, not involving Federal activities, which are reasonably certain to occur within the action area (for projects with adverse effects only).

F. Summary/Conclusion and a Determination of Effects- (select one for each species/critical habitat):

- i. **No effect-** appropriate when there are absolutely no effects of the project, positive or negative, on listed resources. "No effect" does not include small effects or effects that are unlikely to occur. If effects are beneficial, insignificant (in size), or discountable (extremely unlikely), a "may affect, not likely to adversely affect" determination is appropriate (see below). A "no effect" determination does not require written concurrence from the FWS; however, the action agency should document and support the determination.
- ii. **May affect-**
 - a. **Not likely to adversely affect-** appropriate when all effects are beneficial, insignificant, or discountable. Beneficial effects have contemporaneous positive effects without any adverse effects to the species or habitat. *Insignificant effects* are small in size, and should not reach the scale where take occurs. *Discountable effects* are extremely unlikely to occur. Based on best judgment, a person would not: 1) be able to meaningfully measure, detect, or evaluate insignificant effects or 2) expect discountable effects to occur. This determination requires informal written concurrence from the FWS.
 - b. **Likely to adversely affect-** appropriate when adverse effects cannot be avoided. A combination of beneficial and adverse effects is still "likely to adversely affect," even if the net effect is neutral or positive. Adverse effects do not qualify as discountable simply because they are not certain to occur. The probability of occurrence must be extremely small to achieve discountability. Likewise, adverse effects do not meet the definition of insignificant because they are less than major. If an adverse effect can be detected in any way or if it can be meaningfully articulated in a discussion of the results, then it is not insignificant. This determination requires a request for formal consultation with the FWS.

G. References**H. List of Contacts Made****I. Maps/Photographs/Figures**

SUBJECT: EJ AND ILLUSTRATIVE ALTERNATIVES

DATE: September 30, 2005

TO: Michigan Department of Transportation, Bureau of Transportation Planning

FROM: Mrs. Dolores Leonard, Fort and Schaefer, Zipcode 48217

While I am a member of the Environment Justice Committee, Sierra Club and the Original Citizens of Southwest Detroit, the following comments are submitted from me as a citizen of the city of Detroit. My community would be greatly impacted by the selection of either C2 and C3 Illustrative Alternatives.

I thank the Department of Transportation for the opportunity to view both sides of the Detroit River from the vantage point of the riverboat tour that took place Wednesday, September 28, 2005.

All along the way, I noted the Canadian side of the river had more greenery whereas the American side had much more industrial sites and wondered if this meant the American side is not as conscious about the environment as the Canadians or did it mean citizens on the American side of the river were settled sooner and therefore had greater opportunity and more time to build industrial sites than their Canadian counterparts?

During the boat tour, I spoke with persons from Canada and those who live in communities other than Detroit. All persons seemed to be focused on a basic theme - the quality of life should a disruption of their communities take place. A person living in Canada expressed the concern of the truck noise and air pollution experienced in the community around the Ambassador Bridge. That person lives two blocks from the Ambassador Bridge. Persons from Southgate expressed what they viewed as an illogical choice coming from the river through Pennsylvania Road to connect to I75. They just built their home. Several persons expressed their views that the bottleneck at the Ambassador Bridge comes from the Customs Area on both sides of the Ambassador Bridge. At what point did the bottleneck occur? It was suggested at the point the trucks were routed differently at Clark Street.

When the first public presentations of an international crossing was introduced, it was a matter of the possibility of a bridge or a tunnel; the possibility that a bridge or tunnel may or may not be necessary. Now I do not hear bridge or tunnel nor it may or may not take place. Now I hear a bridge will be built and it is just a matter of where. Because of so many negative experiences with bureaucracy in the past, my position is that a decision has already been made as to where a bridge will be erected.

In my community of Fort and Schaefer, I am concerned about the amount of industry that already exists -- a major oil refinery, Marathon Oil; the Detroit Salt Mines bombing for salt daily beneath our homes; Ford Motor Company; the city of Detroit Waste Water Treatment Plant and U. S. Steel (Great Lakes Steel). In the city of River Rouge, there are oil storage/gas storage tanks leading towards Belanger Park; Also in that area, there is a large Detroit Edison complex. There are companies that no longer operate in the community but their existence still has a lingering impact - Fabricon on Pleasant Street, Detroit; Whitehead and Kales, River Rouge.

Whereas C1 is located in the city of Ecorse, C2 in the city of River Rouge and C3 in Delray, all three proposed sites would have a profound impact upon the 48217 zipcode community of 10,515 people. U.S. Census data for zipcode 48217 indicate there are 2,057 persons 65 years and over living in the area. The median family income (1999) is \$33,970 which is well above the poverty level. Additionally, there are 2,990 disabled persons living in the area. Seventy percent of the homes are owner occupied; 30 percent are renter occupied properties. There are 4,303 total housing units in the 48217 zipcode.

Other 48217 zipcode community characteristics - two schools - Boynton and Mark Twain; one community center - Kemeny; one playground - Piwok located at Annabelle and Visger; one senior citizen high rise on Annabelle street which is located four blocks from Schaefer; approximately 20 churches; approximately 25+ businesses; the historical Fort Street Bridge to be renovated in 2006 by MDOT is close to the proposed C2 alternative.

Also, it should be noted in the 48218 zipcode on Coolidge (Schaefer), the newly built River Rouge High School stands. There are at least four elementary schools in River Rouge that would be impacted by air pollution.

There is a June 2003 fact sheet published by EPA regarding air pollution and children. The data discusses the health impact of diesel exhaust near schoolyards as they idle (www.epa.gov/cleanschoolbus). Logic suggests proportionately school busses to trucks there will be a heavy health impact upon any community from diesel exhaust fumes wherever a bridge is built.

While I am aware that communities grow through commerce, I am equally concerned that communities stay whole and intact. There are many citizens living in my community who were displaced as a result of the I94 expressway that came through a solid African American community in the city of Detroit. The expressway was not built for the convenience of the community but for commerce; built so that people who do not live in Detroit would have access to the city and back to their own intact communities. The I75 expressway is

another example of communities being split and dismantled. All in the name of progress.

One of the evaluation factors to be used in the evaluation process focuses on **protecting the community/neighborhood characteristics**. Table 1 of the Proposed Evaluation Factors and Performance Measures, Illustrative Alternatives Phase presents the seven factors to be considered. Evaluation factor, Protect Community/Neighborhood Characteristics is further delineated by performance measure categories. Environmental justice is one of those categories. The performance measure to be used is the census tracts for those communities. Using hard data should not be the sole source in measuring this category. There is a human element. The seniors who live in this community have raised their families here. Their roots are here. Their homes may only have a median value of \$46,300 but their homes are mortgage free. Free and clear is how many describe their property. They have concerns about the value of their property the same as any other community.

In reviewing the data from the U.S. Evaluation Factor Weighting and the Factor Weighting Rationale - Canadian Version, there is a decided difference in the values of the Americans and the Canadians. The American public rankings (875 respondents) were - #1 Protect Community/Neighborhood Characteristics; #2 - Maintain Air Quality; #3 - Protect Cultural Resources. The Canadian public rankings (45 respondents) were - #1 Changes to Air Quality; #2 - Protection of Natural Environment; #3 - Protection of Community & Neighbourhood Characteristics.

A question was asked during one LAC meeting - what happens when the Americans and Canadians do not agree on the factors? The response was that there would be a decision made based upon consensus. Americans want to protect their community and neighborhood characteristics. Canadians want changes to air quality. This consensus process will be very interesting.

Also in the implementation and process of the factor evaluations, the Canadian project team, public and the CCG completed the process. For the Americans, only the public and the MDOT technical team completed the factor evaluations. The American LAC did not complete the evaluation.

The Sierra Club's definition of environmental justice is - the fair treatment and equal protection under Federal environmental laws to ensure that all people, regardless of race, culture or income level, live in clean, safe and sustainable communities. Further, environmental justice is a human right. It is a civil rights issue. Environmental justice focuses on communities in crises caused by the larger society but fostered on communities such as mine - communities of color and low income. Can the Michigan Department of Transportation look at my community objectively? Will the Environmental Protection Agency and other governmental agencies implement impartially the mandated federal laws and

Presidential Executive Order 12898? Will they ensure that low income communities and communities of color be protected fairly? This country has a history that has not been kind to these classifications of people. Will this Detroit River International Bridge Crossing be the same business as usual?

This week in Washington there was much discussion regarding the Public Health and Environmental Equity Act. The public may/may not be aware that EPA has tried to rewrite the protection for the least of its citizenry. Again, whom do we trust to look out for our communities and treat all fairly and equitably?

U.S. Department of
Homeland Security

United States
Coast Guard



Commander (obr)
Ninth Coast Guard District
1240 E. Ninth Street, Room 2019
Cleveland, OH 44199-2060

Phone: (216) 902-6084
FAX: (216) 902-6088

16590
B-012/rwb
1 February 2006

Ms. Regine Beauboeuf, PE
Deputy Project Manager
Suite 275
26777 Central Park Boulevard
Southfield, Michigan 48076

Dear Ms. Beauboeuf:

This refers to your letter of 18 January 2006 with plans attached to depict "Detroit River International Crossing Study, Proposed Bridge Navigational Clearances."

We have reviewed the illustrations, depicting a bridge with piers on shore and an alternate plan of same bridge with piers in the waterway. While the preferred plan would be for constructing a bridge with no piers in the waterway, we at this time can offer no reason to oppose piers being in the waterway. With piers in the waterway, the channel would not be infringed upon and the horizontal clearance is such that it cannot be argued that it is restrictive and a threat to the safety of vessels or to the bridge. Unless somebody or organization can support a claim that it is necessary to construct a bridge with no piers in the waterway, the cost savings attributable to constructing a bridge with piers in the waterway is considered to be the appropriate and right approach to be taken at this time.

Thank you for the submission and request for our comments.

Sincerely,

A handwritten signature in black ink that reads "Robert W. Bloom, Jr." with a stylized flourish at the end.

ROBERT W. BLOOM, JR.
Chief, Bridge Branch
By direction of Commander,
Ninth Coast Guard District



DEPARTMENT OF THE ARMY
DETROIT DISTRICT, CORPS OF ENGINEERS
BOX 1027
DETROIT, MICHIGAN 48231-1027

March 14, 2006

IN REPLY REFER TO

Engineering & Technical Services
Regulatory Office
File No. 05-007-005-0

Regine Beauboeuf
Parsons
26777 Central Boulevard
Suite 275
Southfield, Michigan 48076

Dear Ms. Beauboeuf:

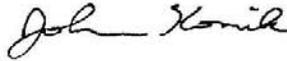
We are writing in response to your letter dated February 6, 2006, wherein you forwarded plans and requested feedback on the proposed placement of piers associated with the potential construction of a bridge span in the Detroit River, near Detroit, Michigan.

In its capacity as a regulatory agency, the Corps of Engineers has been given the authority to issue or deny permits under two Federal laws, Section 10 of the 1899 Rivers and Harbors Act (Section 10) and Section 404 of the 1977 Clean Water Act (Section 404). If the overall purpose is to construct a bridge, our memorandum of agreement with the United States Coast Guard (USCG), allows us to defer our Section 10 authority over the construction of the bridge itself. However, we would still exercise our Section 404 authority for any discharge of fill and dredge material waterward of the Ordinary High Water Mark (OHWM) contour associated with the construction of the bridge, such as the placement of footings, abutments, foundation seals, placement of piers, etc. In the Detroit River, at the proposed locations you have indicated, the OHWM contour extends to 575.4' (IGLD 85). After a preliminary review of your plans, it is possible that we could issue a Nationwide Permit for the placement of piers, contingent upon the issuance of the USCG permit for the bridge and the Michigan Department of Environmental Quality (MDEQ) permit or waiver of their 401 Water Quality Certification.

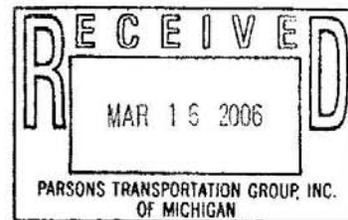
As for us providing you feedback in order to advance your structure studies, the Regulatory Office as the permitting arm of the Corps of Engineers is not in a position to provide technical advice about engineering design aspects of a project. Our permit review process requires an objective evaluation of environmental impacts, after we receive an application for the proposed work. Providing technical assistance and/or advice could be viewed as a conflict of interest. However, we do suggest that you contact Mr. Scott Thieme, Chief, Great Lakes Hydraulics and Hydrology Office (H&H) at (313) 226-6440 for questions pertaining to your project's potential impacts on the hydrodynamics of the Detroit River or Mr. Bill O'Donoghue, Chief, Operations and Technical Services (OTS) at (313) 226-6797 for determining whether or not the proposed work would have impacts on a Corps Project or Corps maintenance dredging schedules.

Should you have any questions, please contact Gina R. Nathan at the above address or telephone (313) 226-5383.

Sincerely,



John Konik
Chief, Regulatory Office
Engineering & Technical Services



Dave Ruggles

From: "Dave Anthony" <anthony@hannahville.org>
To: <AlghurabiM@michigan.gov>
Date: 5/23/2006 2:23PM
CC: <rugglesd@michigan.gov>

Mr, Alghurabi,

I am in receipt of a letter from David Ruggles, Tribal Coordinator, Michigan Department of Transportation, regarding our potential interest in your agency's Detroit River International Crossing project. Mr. Ruggles asked if our government has any cultural, economic and/or social interests in the subject undertaking. Yes, we have considerable interest in the area and the project.

The Hannahville Indian Community is a Potawatomi Tribe with considerable historic and cultural ties to the area in question. This tribe has been active in efforts to ensure the proper handling of human remains and cultural artifacts disturbed at construction sites on traditional tribal lands.

We respectfully ask that you keep this tribe apprised of your activity and included in any matters that may effect the cultural and spiritual interests of the Hannahville Indian Community's ties to the property in question.

Sincerely,
David Anthony
Director of Government Affairs

Dave Ruggles - DRIC

From: "Monte Davis" <mrrdavis@mbpi.org>
To: "Dave Ruggles" <rugglesd@michigan.gov>
Date: 5/30/2006 11:18AM
Subject: DRIC

David L. Ruggles, Ph.D.
Tribal Affairs Coordinator
Environmental Section
State of Michigan
Department of Transportation

Dear Mr. Ruggles:

We thank you for the information on the proposed Detroit River International Crossing. After discussing the project with Chairman Sprague, he informed me of the fact that the area in question is among the ceded territories of the Pottawatomi Bands of Indians who formerly inhabited all of south Michigan and into Canada. While we are not familiar with any specific location within the proposed site that would be of archeological or specific historical significance, the area in general continues to hold overall spiritual, cultural and historical significance, that being the case, we ask that you please list the Gun Lake Tribe as an interested party under Section 106 of the National Historic Preservation Act. Again thank you for your notification and we look forward to hearing from you in the future.

Monte Davis
Environmental Specialist
Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians (Gun Lake Tribe)
1743 142nd Avenue
P.O. Box 218
Dorr, Michigan 49323
(616) 681-8830



POKAGON BAND OF POTAWATOMI INDIANS
GENERAL COUNSEL'S OFFICE

June 26, 2006

David L. Ruggles
Tribal Affairs Coordinator
Michigan Department of Transportation
Murray D. Van Wagoner Building
P.O. Box 30050
Lansing, MI 48909

RE: Tribal Consultation

Dear Mr. Ruggles:

I am in receipt of your letter of May 19, 2006 extending an invitation to the Pokagon Band of Potawatomi Indians ("Pokagon Band") to consult government-to-government regarding the Detroit River International Crossing ("DRIC"). Your letter references a prior invitation of December 2, 2005 to consult and indicates that the Pokagon Band failed to respond. The Pokagon Band has no records indicating it received an invitation to consult dated December 2, 2005.

I have attached the comments of the Pokagon Band on the proposed rulemaking of October 31, 2005 for the Western Hemisphere Travel Initiative put forth by the U.S. Department of State and the U.S. Department of Homeland Security. The attached comments explain the position of the Pokagon Band regarding documents required for travel between the United States and Canada.

I am confirming the Pokagon Band's interest in the DRIC and ask that the Pokagon Band be included in future consultations and meetings. Thank you in advance for your assistance. We look forward to working with the State of Michigan on this matter. If you have any questions about this letter, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael G. Phelan", with a long horizontal flourish extending to the right.

Michael G. Phelan

P.O. Box 180
58155 M-51 South
Dowagiac, Michigan 49047-9329
Voice: (269) 783-0970
Fax: (269) 782-7988
Email: mike.phelan@pokagon.com

E:060628
Ltr to David Ruggles et

POKAGON BAND OF POTAWATOMI INDIANS

TRIBAL COUNCIL

P.O. Box 180, 58620 Sink Road, Dowagiac, MI 49047

Telephone 269-782-6323 / FAX 269-782-9625

October 31, 2005

Bureau of Customs and Border Protection
Office of Regulations and Rulings
Regulations Branch
1300 Pennsylvania Avenue, NW
Washington, DC 20529

Re: Documents Required for Travel Within the Western Hemisphere, Advance Notice of Proposed Rulemaking, 70 Fed. Reg. 52637 (Sept. 1, 2005); Dept. of Homeland Security, Bureau of Customs and Border Protection, 18 CFR 1651-1-1, 1651-1-1.001 Department of State, RIN 1400-AC10.

Dear Sir or Madam:

I am writing on behalf of the Pokagon Band of Potawatomi Indians to comment on the proposed rulemaking described above, which will implement requirements under the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Pub. L. 108-458, (18 Stat. 3638, enacted on October 17, 2004). The Pokagon Band is a federally-recognized Indian tribe, see "An Act to Restore Federal Services to the Pokagon Band of Potawatomi Indians," Pokagon Restoration Act, 25 U.S.C. § 1300i (Pub.L. 103-323, 108 Stat. 2153), as amended. As a constituent band and political successor to the Potawatomi Nation, the Pokagon Band was a signatory to at least eleven treaties with the United States dating back to the Treaty of Greenville 1795 (7 Stat. 49).

I. Introduction.

Beginning in the 1830's, segments of the Potawatomi Tribe escaped forcible removal from Michigan and Illinois to Kansas and Oklahoma by fleeing to Ontario Canada. Canada listed 290 Potawatomi residing in Ontario in 1890. There are presently more than 2,000 Native Americans of Potawatomi descent residing in Canada. See <http://www.tolatsga.org/pota.html> (last viewed on October 28, 2005). In recognizing the close affiliation between the Canadian Potawatomi Bands and the Potawatomi Bands in the United States, including the Pokagon Band, the United States Court of Claims stated:

Most of those who had resided on the lands ceded by the Articles Supplementary remained in southern Michigan and largely assimilated themselves into the white man's society there. They became known as the Potawatomi of Michigan and

Indiana. Those who had resided in northern Wisconsin adopted an essentially nomadic existence, surviving by hunting, fishing, berry-picking and occasionally working in the lumbering industry. Some of that contingent emigrated to Canada and are not involved in this proceeding. The remainder of the former inhabitants of the treaty lands scattered about Michigan, successfully evading the efforts of Federal troops to forcibly remove them to the West.

Hannahville Indian Community v. U.S., 4 Cl.Ct. 445, 456 (Cl.Ct., 1983). See also *Pottawatomi Nation in Canada v. U.S.*, 27 Fed.Cl. 388 (Fed.Cl., 1992).

The present day Potawatomi Nation is comprised of nine Potawatomi Bands located in the United States and Canada with a collective membership in excess of 50,000. Significant numbers of Potawatomi Indians residing in Canada travel to the United States each year for various tribal events, including an annual Potawatomi meeting called the Gathering. The Gathering is a well-organized annual celebration of Potawatomi culture and traditions and provides an important opportunity for Potawatomi Indians and their elected leaders to meet face-to-face to address social and political concerns common to the Potawatomi Tribe. In general, Indians who are members the Potawatomi Bands located in Canada have for many, many years freely passed through the U.S. border based on rights recognized under the Jay Treaty of 1795 and, more recently, federal statutory law.

II. The Jay Treaty of 1795

After the American Revolutionary War, a number of Indian nations were disrupted by the newly established U.S.-Canadian border. Great Britain and the United States addressed the problem by including the following provision in the Jay Treaty of 1795:

It is agreed that it shall at all times be free . . . to the Indians dwelling on either side of the said boundary line, freely to pass and repass by land or inland navigation, into the respective territories and countries of the two parties, on the continent of America . . . and freely to carry on trade and commerce with each other. . . . [N]or shall the Indians passing or repassing with their own proper goods and effects of whatever nature, pay for the same any impost or duty whatever. But goods in bales, or other large packages, unusual among Indians, shall not be considered as goods belonging bona fide to Indians.

Article III, Treaty of Amity, Commerce, and Navigation, Between His Britannick Majesty;—and the United States of America, By Their President, with the Advice and Consent of Their Senate, Nov. 19, 1794, U.S.-U.K., T.S. No. 105 (hereinafter “Jay Treaty”). Following the War of 1812, the U.S. and Great Britain reaffirmed the agreements reached in the Jay Treaty regarding the rights of Indian tribes in the Treaty of Ghent. Treaty of Peace and Amity, art. 9, Dec. 24, 1814, U.S.-U.K., T.S. No. 109.

III. Jay Treaty Rights Recognized by the U.S. Courts.

One of the earliest immigration laws enacted by Congress, the Immigration Act of 1924 (43 Stat. 152), contained no reference to the rights of Indians under the Jay Treaty. The United States Court of Appeals for the Third Circuit discussed this omission in *United States ex Rel. Diablo v. McCandless*, 18 F.2d 282 (D.C. Pa. 1927), *aff'd* 25 F.2d 71 (3rd Cir. 1928), in which it found that a full-blooded Iroquois Indian resident of Canada was not subject to deportation for failure to comply with the 1924 Act because Article III of the Jay Treaty had exempted American Indians from the operation of the immigration laws of the United States. The holding in *McCandless* was codified into law by the Act of April 2, 1928 (45 Stat. 401; formerly 8 U.S.C. 226a), which states:

That the Immigration Act of 1924 shall not be construed to apply to the right of American Indians born in Canada to pass the borders of the United States: *Provided*, that this right shall not extend to persons whose membership in Indian Tribes or families is created by adoption.

After the *McCandless* decision, Indians born in Canada were permitted to enter the United States without inspection under the immigration laws. The holding in *McCandless* was clarified in *United States ex Rel. Goodwin v. Kenneth*, 74 F. Supp. 668 (D.C. N.Y. 1947), in which the Court stated that the exemption of "American Indians born in Canada" was applicable to persons of Indian blood generally and not just to members of a tribe, since it was premised on racial and not political considerations.

IV. Jay Treaty Rights Codified in Federal Statutory Law

The exemption for Canadian born Indians to enter the U.S. without inspection under immigration laws that was recognized by the U.S. courts in the *McCandless* and *Kenneth* decisions is embodied, with slight modification, in immigration laws currently in effect. Section 289 of the Immigration and Naturalization Act of June 27, 1952 (66 Stat. 234; 8 U.S.C. 1359) provides:

Nothing in this subchapter shall be construed to affect the right of Indians born in Canada to pass the borders of the United States, but such right shall extend only to persons who possess at least 50 per centum of blood of the American Indian race.

Therefore, the provision made in Article III of the Jay Treaty for the free passage of Indians from Canada into the United States has been reaffirmed by Congress and remains as a right recognized and preserved by federal law.

V. Potential Impact of IRTPA on Jay Treaty Rights

Section 7209 of IRTPA mandates that U.S. citizens and non-immigrant aliens who are presently exempted from the requirement to produce a passport to enter the United States must produce a passport or other approved documentation that establishes identity and citizenship as of December 31, 2006 if traveling by sea or air and by December 31, 2007 for land crossings. The new document requirements may only be waived under three circumstances: (1) when the Secretary of Homeland Security determines that "alternative documentation" different from that

then being required under Section 7209 is sufficient; (2) in an individual case of an unforeseen emergency; and (3) in an individual case based on "humanitarian or national interest reasons". It would appear that the only viable means of preserving the rights of Indians under Article III of the Jay Treaty and other federal law following the passage of IRTPA is for the Secretary of Homeland Security to provide a waiver that accepts "alternative documentation" from Indians seeking entry into the United States.

VI. Comments and Proposals from the Pokagon Band Regarding the Proposed Rules for Implementing IRTPA.

The Pokagon Band considers the possible implementation of IRTPA requirements that would require a passport or other similarly rigid documentation to establish identity and citizenship as an unwarranted abrogation of the rights of Indians under the Jay Treaty. The Pokagon Band urges the Secretary to preserve long-standing Jay Treaty rights of Indians through a waiver that would accept alternative documentation.

Among the alternative types of documents that should be considered acceptable are identify (membership) cards issued by Indian tribes located in the U.S. and Canada. Most tribes have particularly rigid standards and procedures that must be met before a membership card will be issued, including specific requirements regarding identity and ancestry. Tribes also have laws to protect against fraud and forgery.

In order to give appropriate consideration to how best to implement regulations under IRTPA while preserving the rights of Indians under the Jay Treaty and other federal law, the Secretary should engage in government-to-government consultations with Indian tribes. Pursuant to the Memorandum of the President, 59 Fed. Reg. 22951, the Department of Homeland Security and the Department of State, as federal agencies, are required to consult "to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments." All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of the relevant proposals.

The abrogation of long-standing rights of free passage under federal law through the imposition of a passport requirement for Indians at U.S./Canadian border crossings would have a significant impact on the political, social and economic welfare of Indian tribes. U.S. policy has enacted incalculable damage on tribal communities throughout the last two centuries. As indicated above, the U.S. policy to forcibly relocate the Potawatomi Tribe resulted in the several Potawatomi Bands being scattered throughout the United States and Canada. The efforts of Indian tribes to address the harmful impact of this policy would be adversely affected if the Secretary declines to preserve long-standing Jay Treaty rights of Indians through consultation with Indian tribes and the acceptance of alternative documentation establishing identity and citizenship for Indians.

Individual Indians will likely incur increased costs to acquire passports and other documents that could be required for border crossings. Indian people are among the poorest groups of people in both the United States and Canada. While the cost of obtaining a passport or

other approved documentation may not be significant for many people, this seemingly modest economic burden will weigh more heavily on Indian people. Many Indian people will face a choice of foregoing critical money needed for food, shelter, and healthcare in order to pay the cost of acquiring a passport or other documentation. Most Indian communities are located in rural areas and at significant distance from government offices that issues passports. Moreover, Indian people often lack adequate healthcare and suffer from debilitating medical conditions that make travel to such distant locations more difficult. As a result, if Indian people are required to obtain a passport to cross the U.S.-Canadian border, many Indian people will be unable or unwilling to make the sacrifices necessary to do so. Ultimately, by creating additional, unwarranted barriers to international travel for Indian people, many Indian tribes, including the Pokagon Band, will find their efforts to protect and preserve their cultural identity and political autonomy more difficult.

The Pokagon Band understands and fully agrees with the importance of improving security and U.S. borders to protect U.S. Citizens and property. It is not necessary, however, to implement IRTPA in a manner that would abrogate or diminish the rights of Indians under the Jay Treaty and other federal law. The Pokagon Band urges the Secretary to consider a waiver regarding the documents required of Indians at U.S.-Canadian border crossings. Specifically, we urge the Secretary to consider approving membership cards issued by the Pokagon Band and other tribal governments as alternative documentation.

Please do not hesitate to contact us if we can be of further assistance in your effort to develop appropriate approaches for implementing the requirements of the Intelligence Reform and Terrorism Prevention Act of 2004.

Sincerely yours,



Lynn Davidson
Tribal Vice-Chairman