

16 May 2007

1016 Wilson Ave.,
Kitchener, ON N2C 1J3

Gordon Miller
Environmental Commissioner of Ontario
1075 Bay Street, Suite 605
Toronto, ON M5S 2B1

Dear *Commissioner* Miller:

RE: Request for judicious involvement with the Class Environmental Assessment for South Kitchener Transit Study

Today we respectfully submit to you and your staff a request to become involved with the Class Environmental Assessment (EA) for the South Kitchener Transit Corridor Study (SKTS). This request extends from our repeated attempts to resolve information presently being used for this EA by the Region of Waterloo (hereafter Region). We request your involvement in this matter to provide independent verification and objective consideration of available information and such is justified by the tenets of the *Environmental Bill of Rights*.

The focus of the SKTS concerns the evaluation of alternate routes to extend an existing road in the Region to facilitate connectivity to Provincial Route 401. Specifically, the alternate routes have been under consideration by the Region since the project started during the summer of 2005 (see Appendix A). At that time, the Region began assessing options for road routes. After various studies and public consultation sessions, the Region identified the preferred route, of several routes proposed, for the road **only** during a February 2007 public open house. During this particular meeting, the Region explained the justification for the preferred route for the road. The route was of importance because it follows a path directly across Schneider Creek and then through a heritage forest that contains three connected provincially significant wetlands (PSWs), documented rare animal and plant species, and not surprisingly, a site designation of 'Environmentally Sensitive Policy Area (ESPA)' by the Region. This route selection through an ESPA warranted a careful review by concerned citizens of the information presented to justify this decision. Starting just after the February 2007 open house, a number of individuals have identified in writing to the Region the various inconsistencies pertaining to the information used to identify the road route, and subsequently requested clarification and additional information to resolve the key details. One example of a readily obvious gap as noted at the February open house was the lack of any formal EA for Schneider Creek even though it may be realigned and have a bridge built over it, in conflict with the guidance offered through the *Federal Fisheries Act*.

To date, some requests for clarifications from the Region have been resolved regarding various aspects of this information, in writing, to concerned citizens. For example, one series of questions that started at the Open House and was followed by letters and electronic mail concerned the unconventional methods used to identify the presence or absence of amphibian species at the site. Of particular concern was the previous report of the presence of the provincially and federally protected Jefferson salamander (*Ambystoma jeffersonianum*) at the site. Our extended communications with the Region during March 2007, led to the admission by the Region, that the previous surveys for salamanders were incomplete, so additional surveys for salamanders were completed during late March and April 2007. The salamanders caught at the site are currently being assessed for identify, with genetic analyses, by expert scientists at the University of Guelph. These communications with the Region revealed the consultant, LGL Limited, which was responsible for the biological inventory for Hidden Valley has been aware, since at least April 2004, the salamander surveys were incomplete. This recent correspondence revealed the consultant could have completed additional surveys at the site during 2005 or 2006 to address this problem but elected to ignore it. With this awareness, it is now clear that the Region and the consultant presented incomplete biological inventory information for Hidden Valley to the public as evidence the Jefferson salamander was not at the site. This incorrect information was then used to justify the preferred road alignment directly through some of the vernal ponds and PSWs that may be used by this salamander at the Hidden Valley site. Admission by the ROW that a key element of the biological inventory is incomplete leads to other explicit and tacit questions about the site, as we noted in writing to the Region, and described briefly below.

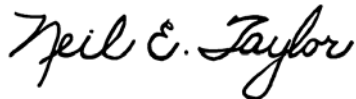
To clarify, it took at least three sets of letters and various electronic mail messages over the course of several weeks to raise the question of the status of the Jefferson salamander in Hidden Valley with the Region. With hesitation, the Region did agree to have their consultant resample Hidden Valley for salamanders, and this information is not yet available for consideration by the public or other concerned parties. It is also not clear when this information may become available. The status of the Jefferson salamander at this site needs to be clarified in order to fully evaluate the choice of the route the road through Hidden Valley. Interestingly, at least two other road routes were identified by the Region that would have gone around Hidden Valley (see Appendix B) but were removed from consideration for reasons that continue to remain unclear

At this time, we have raised comparable questions in writing to the Region on the status of rare vascular plants, protected mammal species, water quality and volumes issues, and the lack of any fish species in the streams that traverse this intact forest that sits directly adjacent to the Grand River. For example, Mr. Eyad Soltan and Mr. Chris Gosselin, both of the Region, have offered to provide information to us on these matters, to address our concerns. We have not received adequate answers on these matters to date. However, the planning process for the road development continues to move forward despite the now confirmed incomplete nature of the original site assessment. The information used for the decisions in this process must be available for public scrutiny.

This lack of resolution of information for this process was recently described in a letter to the *Minister* of Environment, when we requested involvement directly from the Province in this matter. The Office of the *Minister* of Environment responded with the advice to continue to communicate with the Region and their representatives. At this time, we do not understand why the *Minister* would encourage us to continue to try to communicate with individuals that are not providing professional feedback on these matters, even though they are Civil Servants, employed by the Region. Inasmuch as we did not want to use this approach, we have attempted additional communications with the Region, but the results, as noted earlier, have not resolved the remaining questions involving plants, mammals, water, and fish. As an alternate approach, about one week ago, we explicitly requested Mr. Gosselin to identify another 'independent' person to participate in this information exchange. At that time, we suggested the *Ombudsman* for the Province of Ontario, or your office, to become involved in this matter. To date, Mr. Gosselin has not provided an answer to this latter request, either, and so we are contacting you directly to request involvement with this matter.

In summary, the selection of a road route through an intact valley with heritage trees, PSWs, rare plants and animals, while ignoring other road options has raised the concerns of many citizens in the Region. We have identified these concerns in writing and only sparse information has been provided to resolve the questions. One question concerning the status of rare salamanders at the site resulted in new surveys being completed during the spring of 2007, and this new information has not yet been provided to any interested parties. That the Region would conduct additional biological surveys for the site confirms the original information used to justify the route of the road was incomplete and therefore the decision criteria for the road were also incomplete. Because road routes around the Hidden Valley site were identified as feasible in this process, but not selected, also conflicts with the binding guidance offered in the 2005 Provincial Policy Statement pertaining to PSWs, natural heritage features like intact forests in southern Ontario, and rare animal and plant species.

At this time, we request the office of the Environmental Commissioner to help resolve the information being used to justify the road through Hidden Valley of Kitchener. If your office is willing to consider this matter in detail, we will submit all relevant information as soon as possible.



Neil E. Taylor



Dean Fitzgerald
120 Queen Isabella Crescent
Maple, ON L6A 3J8