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March 31st, 2014

Hon. James Bradley MPP

*Minister of the Environment*

135 St. Clair Avenue West, 12th Floor

Toronto, ON M4A 1P5

Hon. David Orazietti MPP

*Minister of Natural Resources*   
6630- 99 Wellesley St W, 6th Floor, Whitney Block

Toronto ON M7A 1W3

Dear Ministers Bradley and Orazietti: (Via e-mail)

**RE**: **Request that the ‘Schedule C’ Environmental Assessment (EA) for the South Kitchener Transit Study (SKTS) in Kitchener be transferred to full EA via ‘Part II Order’**

Over several years, staff members from the Region of Waterloo (ROW) have been studying options for an alteration to the traffic patterns on the south side of Kitchener, near Highways 8 and 401, in the vicinity of the Grand River. This exercise is referred to as the South Kitchener Transit Study (SKTS). Several preferred road alignments have been presented to the public and evaluated within the EA. The current preferred road alignment was identified based on the contents of different biological inventories of Hidden Valley. With this inventory information as the basis of planning for the SKTS, the ROW at a March 2014 public open house stated that the Hidden Valley area includes at least 11 confirmed Species-At-Risk (SAR) with more than thirty (30) additional SAR likely within the study area. The ROW stated at this same public meeting the proposed alignment of the SKTS would not have significant effects on the environment. However, to date, only one SAR has been studied in detail within the SKTS, the Jefferson Salamander (*Ambystoma jeffersonianum*), per the tenets of Ontario’s ***Endangered Species Act* (ESA), 2007, under REGULATION 242/08.** Since the ESA requiresthe protection of habitat used by SAR, it is unclear at this time why the SKTS did not study the other 40+ SAR that may exist in the SKTS. Due to the stated lack of studies on SAR that were noted to the public and documented in the SKTS, this process cannot be regarded as completed, and it is incorrect to state that no significant effects are expected to result from the proposed disturbance. Clearly, assumptions of effects on SAR have been inferred without proper study.

Today I write to you because I have raised this matter of a lack of proper treatment of SAR in the SKTS countless times with staff of the ROW. As late as a Nov. 26th, 2013 letter to ROW, I observed that with respect to SAR and mitigation, the ROW was now on the record as stating that “consideration”, “consultation”, and “as necessary’ will be the *modus operandi*. Past actions demonstrated the ROW has failed to provide concrete methods of mitigation for the other SAR that exist in the study area. It is noteworthy that when this process started, the initial biological inventory stated that no SAR existed in the study area! Then interested members of the public such as myself insisted that Jefferson Salamander may be there. Then the due diligence study of this SAR identified a large breeding population exactly in the path of the proposed road. Despite this auspicious start, the ROW has not conducted follow-up studies on the other SAR that are also found in spatial association with the Jefferson Salamander. This obfuscation of the SKTS has involved the stated intention to study SAR and then ignore SAR has been well described in the mass media and I can provide such evidence, if it is of interest. At this time, there may be 40+ SAR in the study area and gaps exist in data used in the analyses presented in the SKTS. What is most amazing is that the ROW has not been able to determine accurately the list of SAR even at this late date. You should also be advised that I had to resort to the Freedom of Information Commissioner’s Office to obtain documents for the SKTS in the past when my letters resulted in promises of information with none provided in a timely manner. In summary, this March, the ROW has accepted the SKTS due the stated analysis of no significant effects being expected without proper study of 40+ SAR. In support of this letter, I am attaching the different letters I sent to ROW, asking for information and clarification of the process being followed.

**BACKGROUND**

I present this subject to you because Hidden Valley is a site that includes a large provincially significant wetland (PSW), a 75+ ha forest of heritage trees (many > 150 years old), is home to more than a 100 species of birds, mammals, amphibians, etc., multiple vernal ponds, and is traversed by several streams.

It seems prudent to review the events pertaining to salamander surveys at the Hidden Valley site, based on the information received to date. These events shed light on the adequacy of the planning and public consultation process for Hidden Valley. My initial review of the site inventory identified that it noted odd or few methods describing the field surveys. This view led to questions when the preferred road alignment was proposed as early as March of 2007, I identified deficiencies in the South Kitchener Corridor Transportation Study 2004 Field Investigations re. the inventories of birds, vascular plants as well as reptiles and amphibians. Conversations with representatives from the consultant working with the ROW, LGL Limited, identified that indeed odd methods were used, particularly for the salamander surveys. My initial written communications with ROW identified these concerns, but the ROW initially downplayed the importance of this observation. Then, after further communications, the whole story was assembled on what happened at the Hidden Valley pertaining to the salamander surveys. The firm LGL was hired to use standard methods to sample salamanders during the spring migration and then through the early summer months. Although LGL completed extensive and likely standard field efforts during March 2004, they can be regarded as unsuccessful due to the prevailing weather conditions. Then LGL did not conduct another spring migration survey, even with the full knowledge that past efforts failed. LGL then excluded the unsuccessful March 2004 results when the biological inventory for Hidden Valley was used with the SKTS.

The ROW initially defended the approach taken by LGL of using anecdotal information and inferences to identify the salamanders as absent in Hidden Valley. This information was marshaled to justify the argument that the protected Jefferson salamander was not in Hidden Valley and not at risk from effects in the EA.

To the credit of the ROW and following my criticisms of earlier field study methods, new inventories were conducted. These studies revealed that while the 2004 study which categorically stated that no Jefferson’s salamander were to be found in Hidden Valley, in fact the new inventories revealed that Hidden Valley is home to possibly the largest population of this SAR in Ontario! In the course of a short time period and with proper methods, the salamander population went from an inferred zero to a robust and healthy breeding population.

In the public consultation process, alternate routes around the Hidden Valley site were considered. This selection process was based primarily on economic considerations and minimized the importance of the PSWs, extensive heritage trees, and other natural features of Hidden Valley. Such a decision reflects, from a broad view, a short-sighted approach, given the present issues facing the ROW concerning air quality and the known benefits of sites like Hidden Valley. The consultation process and proposed road have been recently framed within the rubric that best management practices will reduce the impacts on the PSW, trees, etc. If the ROW followed the guidance in the 2005 PPS or Planning Act, R.S.O. 1990, CHAPTER P.13, the preferred route identified should have minimized impacts on the ecosystem services provided by Hidden Valley to the ROW. This represents another reason to involve the MOE in the EA process.

In referring to the Planning Act, I cite specifically, Part II, Section 34 (3.1)

**“For prohibiting any use of land and the erecting, locating or using of any class or classes of buildings or structures on land,  
i. that is contaminated,  
ii. that contains a sensitive groundwater feature or a sensitive surface water feature,…”**

and, Section 34 (3.2)

**“For prohibiting any use of land and the erecting, locating or using of any class or classes of buildings or structures within any defined area or areas,  
i. that is a significant wildlife habitat, wetland, woodland, ravine, valley or area of natural and scientific interest,  
ii. that is a significant corridor or shoreline of a lake, river or stream, or  
iii. that is a significant natural corridor, feature or area.”**

The Minister should also be aware that on the GRCA web page, the following is published:

**“The GRCA has adopted a new wetlands policy, which was approved by the GRCA general membership on March 28, 2003.**

**The GRCA’s new policy is based on four principles, which it is adopting to signal its intent to be more vigorous in protecting wetlands. Implementation of the new policy will also require the GRCA to work closely with municipalities in the watershed.**

**These principles are:**

* **Wetland loss will be avoided. In other words, the GRCA has set as its goal that all wetlands will be protected, regardless of whether they are Provincially Significant or not.**
* **Wetlands will be managed on a watershed and subwatershed basis. Wetlands will be managed based on their benefit to a larger region and not just on their effect on their immediate location.**
* **Wetlands are core components of the natural heritage system of the Grand River Watershed.**
* **Wetlands are critical to sustaining surface and groundwater quality and quantity and therefore essential to the well-being of humans and all other forms of life in the Grand River watershed.”**

This is the same agency that is in partnership in the new current salamander survey, but appears silent with respect to above stated policy and principles.

The consultant that prepared the latest biological inventory for Hidden Valley has been made aware that past salamander surveys were incomplete. As an example, the consultants together with MNR staff are unable to identify how one specimen of Jefferson’s salamander was found at a great distance from others in the same study area. At this time, I submit this specimen could only have come from an area that is now part of the preferred road alignment.

Given that the biological inventory of Hidden Valley has been confirmed in the past as incomplete, the other questions that arose upon review of the original work contemporaneous with the salamander questions are noted below, so they can be considered in a future Full EA:

1. The preferred road alignment will cross Schneider Creek, but does not include any focused consideration of this stream. For example, it seems that if the channel of Schneider Creek will be modified or realigned and a bridge built over it, that a detailed assessment of possible impacts should have been completed, pursuant to the guidance offered through the Federal *Fisheries Act*. No studies of turtles in this creek have every been completed. In addition, the multiple stream tributaries that traverse the presently intact Hidden Valley forest, located downstream of Schneider Creek but upstream of the Grand River, were reported in the biological inventory to have no resident fish. This was viewed as a rather unique situation for southern Ontario although the methods used for the fish survey for Hidden Valley were brief, like the salamander survey details, with no direct identification of site selection or duration of sample collection.

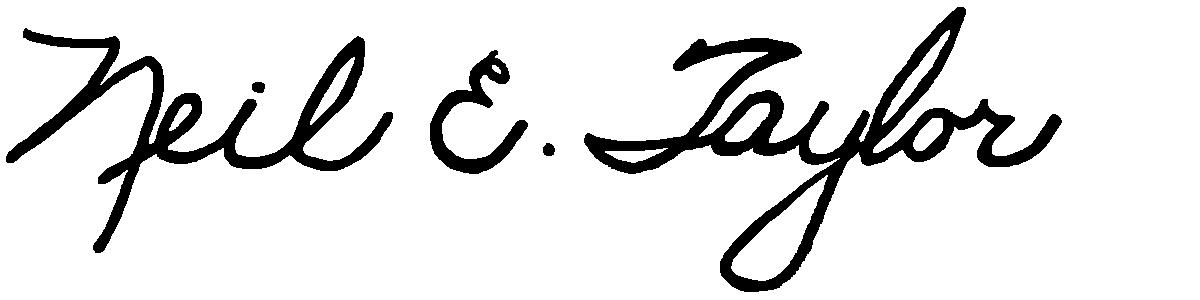
1. The Hidden Valley site contains diverse features like a large PSW, large tracts of heritage trees, rare herbaceous plants, and 100s of resident bird and animal species. These details justify the previous designation of the majority of the site as an ‘Environmentally Sensitive Policy Area’ by the ROW. Despite this designation by the ROW and the tenets regarding land use and planning stated in the 2005 Provincial Policy Statement (PPS), the proposed development was identified although other options, including a road around the valley, were noted. Such natural heritage features of Hidden Valley justify further consideration of the preferred road routes.
2. Given the presence of streams and a PSW at the Hidden Valley site, it is known to contribute significant volumes of water to the Grand River but these volumes have not been quantified to date. Hence, the consequences of the proposed road on the water volumes were not included in the site inventory or assessment. For example, the quantity and potential value of the water volumes lost due to the proposed development need to be considered in the site assessment and feasibility study. Losses of such water volumes could represent a significant economic consequence of this project that would be borne by all residents of the ROW. Such a consequence was recently identified by the City of Guelph when they justified to the Ministry of Environment about why a gravel pit expansion was declined in Wellington County. This subject is of particular importance, as the water intake used by the ROW on the Grand River, at the Mannheim Weir, is located about 500 m downstream of the Hidden Valley site. It is conceivable that anything that happens in Hidden Valley will be directly reflected in the river conditions at the weir, so a loss of water volumes could be a significant occurrence but has not been considered or quantified to date in the EA process.
3. If the proposed road through Hidden Valley occurs, it is likely to be concomitant with increased transfer of road salt and other runoff to the adjacent forest, PSW, and streams. The consequences of the salt on the PSW or other site features have not been carefully considered to date. Similarly, the likely degradation of water leaving the Hidden Valley site, directly to the Grand River, in terms of salt or perhaps sedimentation that may impact water quality for fish in the river directly downstream of Hidden Valley or water quality at the Mannheim Weir also have not been considered in detail by the ROW.
4. If the proposed road through Hidden Valley occurs, it is likely to be followed by additional development of the land adjacent to the road. These have been described at public meetings as ‘friendly developments’. Examples noted by ROW staff included banks and other businesses that would limit the access people would have to the site. However, it was also noted that the ROW could not limit the use of road salt in the parking lots of these developments. Thus, if the development proceeds, it will be directly associated with road salt additions to the site from the road and other ‘friendly developments’. Given the ROW is currently spending millions of dollars to reduce the salt contamination in the drinking water in places other than Hidden Valley, these issues need to be directly addressed in the assessment of options for Hidden Valley. It seems illogical for the ROW to actively promote behaviour across large areas to limit contamination by road salt and to ignore this very issue for the Hidden Valley.

While I observe that the ROW has attempted to lessen the impacts with the design of the new preferred alignment of the 4-lane highway, staff have refused to answer repeated requests for information raised in various letters and telephone conversations. These include:

1. The existence of documents seeking permission from provincial ministries the intent to build new roads into Provincially Significant Wetlands.
2. The existence of documents granting permission from provincial ministries for the intent of the region to build new roads into Provincially Significant Wetlands.
3. A complete list of Species At Risk in the subject area.
4. That at the very least the following SAR have been recorded recently to be in the subject area: **Red-headed Woodpecker (Sp. C), Common Nighthawk (Sp. C.), Chimney Swift (Threatened), Eastern Meadowlark (Threatened), Barn Swallow (Threatened), Milk Snake (Sp. C.), Louisiana Waterthrush (Sp. C.), Acadian Flycatcher, Butternut (Endangered), Bobolink (Threatened), Cerulean Warbler (Threatened), Jefferson Salamander (Endangered), Henslow's Sparrow (Endangered), and Loggerhead Shrike (Endangered).**
5. That all except Jefferson Salamander has not been subject to an **Environmental Impact Analysis (EIA)**. That is, only Jefferson Salamander has received detailedconsideration.
6. The implications on the SAR of the proposed road alignment was not assessed and thereby excluded from the EA despite the ESA 2007, ONTARIO REGULATION 242/08.
7. The reduction in costs by having sidewalks and trails limited to one side of the proposed 4 lane highway and bridges.
8. The reduction in costs by removing the “S” curve into the Provincially Significant Wetlands and thus limiting the ingress to Hidden Valley by using the existing Hidden Valley Road.
9. The increase in traffic in the area resulting from the development that Mr. Peter Benninger of Pearl Valley was proposing at the committee meeting on December 3, 2013.

The documented flawed EA assessment of the SKTS including Hidden Valley in conjunction with complicated communications on this subject also justifies that the ‘Schedule C’ assessment of Hidden Valley be transferred to full EA via ‘Part II Order’.

Respectfully submitted,



Neil E. Taylor

Attachment:

Letter to the Region of Waterloo:

February 25, 2014

October 18th, 2013

November 26th, 2013