

External Contact

RESPONSE FORM

**Banwell Road Class Environmental Assessment Study
From Tecumseh Road East to the CPR Tracks South of Intersection Road**

1. Contact Name: TIM MORIN

2. Ministry or Agency: TRANSPORT CANADA

3. Address: 330 SPADINA ST

OTTAWA Postal Code: _____

Phone No.: 613 941-3845

4. We are interested in knowing your thoughts on this project and ask that you answer the following questions:

a) What do you perceive to be the positive and/or negative effects of this project?

b) Do you perceive any "critical" issues that must be addressed as part of this project?

c) Other than the anticipated Public Information Centres (PICs), how else would you like to be consulted during the project?

5. Do you wish to be notified for continued involvement in the process?

Yes No

Signature [Handwritten Signature]

Date MAR 7 2007

Please return this form to: Len Rach, P. Eng.
Consultant Project Manager
Giffels Associates Limited
11811 Tecumseh Road E, Unit 128
Windsor, ON N8N 4M7
Tel: 519-739-1999
Fax: 519-739-1777
Email: len.rach@giffels.com



May 8, 2007

Len Rach, P.Eng.
Consultant Project Manager
Giffels Associates Limited
11811 Tecumseh Rd. East
Windsor, ON N8N 4M7

Dear Mr. Rach:

**Subject: Notice of Study Commencement and Notice of Public Information Centre No. 1
Banwell Road Class Environmental Assessment Study
From Tecumseh Road East to the CPR Tracks South of Intersection Road**

The Union of Ontario Indians is in receipt of your letter dated May 1, 2007 with respect to the above noted initiative of the City of Windsor. Your letter outlines some minor details related to a Class Environmental Assessment Study to address short and long term traffic impacts, the adjacent road network, provisions for cyclists and pedestrians and to improve public safety in accordance with the Windsor Area Long Range Transportation Study and the Essex Windsor Regional Transportation Master Plan.

This letter re-confirms that under no circumstance should any of the correspondence exchanged between representatives from this organization and Giffels Associates Limited related to the above noted initiative be characterized or construed as a consultation with this organization, its member First Nations or the members of those First Nations. This letter shall serve as evidence that there was no consultation.

We maintain that Aboriginal and treaty rights and any First Nations' interest in its traditional territory, including its resources, cannot be abrogated, derogated or infringed in any way by any government legislation, regulation, policy or initiative.

Section 35 of the *Constitution Act, 1982* recognizes and affirms Aboriginal and treaty rights, and in doing so, it protects both the content of these rights and requires a process of consultation and accommodation.

According to recent decisions of the Supreme Court of Canada, in order to trigger constitutional obligations around meaningful consultation and accommodation,

UNION OF ONTARIO INDIANS

Head Office: Nipissing First Nation, P.O. Box 711, North Bay, ON P1B 8J8 Phone: (705) 497-9127 Fax: (705) 497-9135



First Nations are not required to prove the existence of section 35 rights in a court of law. Instead, First Nations must demonstrate a "prima facie" case for the existence of a section 35 right.

In light of the high standard that has been set in law and by the Courts for governments to consult with First Nations, we are recommending that you meet with all Anishinabek First Nation communities whose traditional territory may be affected by this initiative. It is only through direct discussions with Anishinabek First Nation communities that you will be able to work towards the development of a meaningful consultation process with each individual First Nation.

However, your correspondence on the above issue is not satisfaction of any legal obligation of the government to consult with First Nations.

Yours truly,

A handwritten signature in blue ink, consisting of a stylized, cursive 'A' followed by a horizontal line that tapers to the right.

Allan Dokis
Intergovernmental Affairs Director

July 30, 2007

Mr. Allan Dokis
Union of Ontario Indians
Nipissing First Nation
PO Box 711
North Bay, ON P1B 8J8

Dear: Mr. Allan Dokis, Intergovernmental Affairs Director

**RE: Banwell Road Class Environmental Assessment Study
From Tecumseh Road East to the CPR Tracks South of Intersection Road
City of Windsor**

Thank you for your letter dated May 8, 2007. We acknowledge your concerns and comments regarding the involvement of First Nations members particularly those member Nations (Anishinabek First Nation) that may be directly impacted by this project.

We recognize the importance of good communication and intervention with the members of First Nations and below is a list the other First Nations that were contacted and provided with an opportunity to comment on the project.

- Iroquois Confederacy
- Association of Iroquois and Allied Indians
- Huron-Wendat First Nation
- Metis Nation of Ontario
- Indian and Northern Affairs Canada
- Caldwell First Nation
- Moravian of the Thames First Nation
- Walpole Island First Nation
- Six Nation of the Grand River Territory
- Can-Am Indian Friendship Centre
- Ontario Secretariat for Aboriginal Affairs
- Hiawatha First Nation
- Moose Deer Point First Nation

We will continue to keep you posted as our study progresses and advise you of opportunities to meet the study team to discuss your comments and/or concerns in person at the second public information centre scheduled for the Fall of this year. As an alternative, we would be pleased to meet with you in order to address any concerns that the Union of Ontario Indians may have with our improvements to Banwell Road.

Thank you for your response and input. If you require further information, please do not hesitate to contact the undersigned.

Yours very truly,



Len Rach, P. Eng.
Consultant Project Manager
Environmental Planner

cc: Josette Eugeni – City of Windsor

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Susan Smyth

From: Len Rach
Sent: May 11, 2007 12:31 PM
To: [REDACTED]
Cc: Susan Smyth; Eugeni, Josette
Subject: RE:Banwell Road Class Environmental Assessment Study

[REDACTED]

Thanks for your response to our Notice for the Banwell EA. We are sorry that you will not be able to attend our Public Information Center next week, but we will keep you informed of all developments in this study.

Leonard Rach P.Eng.
Project Manager

Len Rach
Project Manager
Giffels Associates Limited

Len.Rach@giffels.com | T 416 798 5528 | F 416 798 5536 | giffels.com



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From: [REDACTED]
Sent: Wednesday, May 09, 2007 3:58 PM
To: Len Rach
Subject: Banwell Road Class Environmental Assessment Study

Hello,,
My wife and I are unable to attend the meeting May 16th but would like to be kept informed of the developments. Thanks!

[REDACTED]

Susan Smyth

From: Len Rach
Sent: May 11, 2007 12:38 PM
To: ashinas@erca.org
Cc: Susan Smyth; Eugeni, Josette; Anthony Reitmeier
Subject: RE:Banwell Road Class EA - Tecumseh rd east to the CPR Tracks south of Intersection Road

Good Afternoon Alex,

We are just in the preliminary stages of our study and we can share copies of our PIC presentation material with you following next week's PIC. Tony Reitmeier from our office will be in contact with you to gather background data and to share our thought on improvements to Banwell Road.

Leonard Rach P.Eng.
Project Manager

Len Rach
Project Manager
Giffels Associates Limited

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From: Alex Shinas [mailto:ashinas@erca.org]
Sent: Wednesday, May 09, 2007 3:55 PM
To: Len Rach
Subject: Banwell Road Class EA - Tecumseh rd east to the CPR Tracks south of Intersection Road

Len

Is there any information available regarding the Banwell Road Class EA – Tecumseh rd east to the CPR Tracks south of Intersection Road.

Thanks

Alex Shinas, AICP, MCIP, RPP
Conservation Planner
Essex Region Conservation Authority
(519) 776 – 5209 ext. 347

10/23/07

Susan Smyth

From: Len Rach
Sent: May 11, 2007 12:43 PM
To: npoggio@enwin.com
Cc: Susan Smyth; Eugeni, Josette
Subject: RE:Banwell Road Class EA Study

Dear Norbert,

Thank you for your response and for the information relative to works in this corridor. We will continue to keep you informed as our study progresses.

Leonard Rach P.Eng.
Project Manager

Len Rach
Project Manager
Giffels Associates Limited

Len.Rach@giffels.com | T 416 798 5528 | F 416 798 5536 | giffels.com



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From: npoggio@enwin.com [mailto:npoggio@enwin.com]
Sent: Wednesday, May 09, 2007 2:57 PM
To: Len Rach
Cc: msonego@city.windsor.on.ca
Subject: Banwell Road Class EA Study

Mr. Rach

This study should identify that the Windsor Utilities Commission is planning to construct a 900mm dia. feedermain on Banwell Rd. starting from Mulberry Rd. to County Rd. 42 at some future date.

The WUC is currently undertaking a Class EA study for a future reservoir site along this corridor. For further information on the Banwell Reservoir EA study please contact our consultant Dino Burrato at Stantec Consulting 519-966-2250.

Regards,

Norbert V. Poggio P. Eng.
Director, Water Engineering
Windsor Utilities Commission
4545 Rhodes Dr. P.O. Box 1625, Stn. "A" Windsor ON N9A 5T7
Tel: (519) 251-7300 x295
Fax: (519) 251-7316
Mobile: (519) 796-2784

5/24/07

Susan Smyth

From: Len Rach
Sent: May 11, 2007 12:07 PM
To: Finan, Haya
Cc: Martin, Luciano; Susan Smyth; Eugeni, Josette
Subject: RE:Class Environmental Assessment Banwell Road from Tecumseh Road East to the CPR tracks, City of Windsor - TC EA 1659

Thank you for your prompt response and for the information contained in your response. We will continue to keep your agency informed as our study progresses.

Regards,

Leonard Rach P.Eng.
Project Manager

Len Rach

Project Manager
Giffels Associates Limited

Len.Rach@giffels.com | T 416 798 5528 | F 416 798 5536 | giffels.com

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-----Original Message-----

From: Finan, Haya [mailto:FINANH@tc.gc.ca]
Sent: Friday, May 11, 2007 9:19 AM
To: Len Rach
Cc: Martin, Luciano
Subject: Class Environmental Assessment Banwell Road from Tecumseh Road East to the CPR tracks, City of Windsor - TC EA 1659

Len,
Thank you for your letter regarding the above referenced environmental assessment. .

We have reviewed the information, and note the following:

Transport Canada is responsible for the administration of the Navigable Waters Protection Act, which prohibits the construction or placement of any "works" in navigable waters without first obtaining approval. If any of the related project elements or activities related may cross or affect a potentially navigable waterway, you are requested to prepare and submit an application in accordance with the requirements as outlined in the attached Application Guide. Any questions about the NWP application process should be directed to Suzanne Shea, NWP Officer at (519) 383-1866.

<<Annex A Navigable Waters Protection Act Application Addresses.doc>> <<TC Application

Form.pdf>> <<TC Application Guide.pdf>>

Transport Canada is also responsible for the administration of the Railway Safety Act to ensure the safe operation of railways. The Act addresses the construction and alteration of railway works, the operation and maintenance of railway equipment and certain non-railway operations affecting railway safety. Pursuant to the Notice of Railway Works Regulations, the project proponent will be required to give notice of the proposed project to the following persons: the railway whose line is to be crossed, the municipality in which the crossing works are to be located and the authority having responsibility for the road in question. An approval may be required for certain railway works that depart from engineering standards set under the regulations or where an objection has been filed against the work. Any questions about the Railway Safety Act and the Notice of Railway Works Regulations should be directed to Luciano Martin, Manager of Engineering, at (416) 973-2326.

You may also wish to review the Act and Regulations by accessing the following Internet sites:

Railway Safety Act: <<http://www.tc.gc.ca/acts-regulations/GENERAL/R/rsa/act/rsa.html>>

Notice of Railway Works Regulations: <<http://www.tc.gc.ca/acts-regulations/GENERAL/R/rsa/regulations/020/rsa026/rsa26.html>>

Please note that certain approvals under the Navigable Waters Protection Act or Railway Safety Act trigger the requirement for a federal environmental assessment under the Canadian Environmental Assessment Act. You may therefore wish to consider incorporating CEAA requirements into your provincial environmental assessment.

Please contact me should you wish to discuss this further.

Regards,

Haya Finan
Environmental Assistant
4900 Yonge Street
North York, ON M2N 6A5
p: 416-952-3327
f: 415-952-0514

Susan Smyth

From: Len Rach
Sent: May 15, 2007 8:41 AM
To: [REDACTED]
Cc: Susan Smyth; Eugeni, Josette
Subject: RE:PIC No. 1

[REDACTED]

The PIC is structured as a open house/drop in format. We will have display boards describing the project and there will be members of the project team available to answer your questions. We will be available until 8pm on Wednesday so you needn't rush from work.

We look forward to meeting with you and discussing our proposals to improve Banwell Road.

Leonard Rach P.Eng.
Project Manager

Len Rach
Project Manager
Giffels Associates Limited

Len.Rach@giffels.com | T 416 798 5528 | F 416 798 5536 | giffels.com



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From: [REDACTED]
Sent: Monday, May 14, 2007 11:01 AM
To: Len Rach
Subject: PIC No. 1

Dear Len,

Thank you for your correspondence dated May 2, 2007 received Friday, May 11, 2007. I am pleased to receive this correspondence and would have liked to attend to attend this PIC at 3:00 p.m. as stated. I am working from 9 to 5 on May 16th and would like to attend after work but I am not sure whether or not this will be effective for your project team since it would be a possibility that I would arrive a little bit late, between 5:30-6:00.

I will definitely put this date on my calendar and will try to meet you and your project team regarding this study.

Thank you for sending me this information regarding this project.

Sincerely,

[REDACTED]

5/24/07



May 15, 2007

Len Rach, P.Eng.
Consultant Project Manager
11811 Tecumseh Road East, Unit 128
Windsor, ON N8N 4M7



Dear Mr. Rach:


**Re: Notice of Study Commencement and Notice of Public Information Centre No. 1
Banwell Road Class Environmental Assessment Study**

The Six Nations of the Grand River (Six Nations) has received a notice of study commencement and a notice of the first Public Information Centre for a Class Environmental Assessment study to investigate the transportation corridor along Banwell Road from Tecumseh Road east to the Windsor City Limits at the CPR tracks south of Intersection Road.

Six Nations' cultural, sustenance and other rights are recognized by the Province of Ontario by way of the 1701 Treaty of Fort Albany. Six Nations' rights and interests in relation to lands six miles either side of the Grand River (the Grand River Tract) was also confirmed by way of treaty, through the Haldimand Proclamation.

At this time we have no further comment with regards to this application. For further information, please do not hesitate to contact Kate Cave, Land Use Supervisor, (519) 753-2272. We appreciate the City of Windsor for informing us of any and all development applications.

Respectfully Yours,


Councillor George Montour, Chair
Six Nations Lands and Resources Committee
SIX NATIONS OF THE GRAND RIVER

CC: Mr. Paul General, A/Director: Six Nations Lands and Resources
Mr. Leroy Hill, Secretary: Confederacy Council of the Grand River
Minister David Ramsay, Ontario Ministry of Aboriginal Affairs and Natural Resources
Minister Jim Prentice, Indian and Northern Affairs Canada

This letter is without prejudice to the positions that Six Nations has and may take in respect to its claims and litigation in relation to the Six Nations Tract/ Haldimand Proclamation Lands.

Susan Smyth

Subject: FW: Banwell Road Class EA

From: Eugeni, Josette [mailto:jeugeni@city.windsor.on.ca]

Sent: Friday, May 18, 2007 11:31 AM

To: [REDACTED]

Cc: Len Rach

Subject: RE: Banwell Road Class EA

[REDACTED]

Thank you for attending our Public Information Centre for the Banwell Road Corridor Improvements Class Environmental Assessment Study.

By way of this email, I am forwarding your request to be added to the study mailing list to our Consultant Representative, Len Rach of Giffels Associates Limited.

You may also find information regarding the project on the City of Windsor's website, at the direct link www.windsorEAs.ca

Regards,

Josette M. Eugeni, P.Eng.,
Transportation Planning Engineer

CITY OF WINDSOR
Public Works - Operations
1266 McDougall Street
Windsor, Ontario, N8X 3M7
(519) 255-6247 Ext. 6002
(519) 973-5476 Facsimile

-----Original Message-----

From: [REDACTED]

Sent: Friday, May 18, 2007 10:56 AM

To: Eugeni, Josette

Subject: Banwell Road Class EA

Hi Josie .Hope you had a successful PIC on Wednesday Could you please put me on your

E-mail list for notification of future PIC's ?

Thank you

[REDACTED]



**Association of Iroquois and Allied Indians
Ontario Environmental Assessment Act
Fax Back Form**

Date: July 13th

Len Rach, P. Eng. *(Rept. 40)*
Consultant Project Manager
Giffels – An Ingenium Group Company
30 International Blvd.
Toronto, Ontario, Canada
M9W 5P3
(416) 675 4620

Re:

Notice of Study Commencement and Notice of Public Information Centre No. 1 Banwell Road Class Environmental Assessment Study From Tecumseh Road East to the CPR Tracks South of Intersection Road

Notice of Public Consultation Centre No.1 Bathurst Street (Regional Road 38) Improvements – Teston Road to Highway 7 Class Environmental Assessment Study City of Vaughan / Town of Richmond Hill

Notice of Study Commencement Bathurst Street (Regional Road 38) Improvements – Teston Road to Highway 7 Class Environmental Assessment Study City of Vaughan / Town of Richmond Hill

We are in receipt of documentation produced under the Ontario Environmental Assessment Act for our review and comment. Please accept this letter as a response to your invitation and not an act of consultation. We cannot and do not consider this response letter to be consultation as we are not mandated to consult on behalf of our member nations. Our involvement as a representative for the First Nations occurs when invited by one of our member First Nations to do so. Consultation should always occur with the First Nation(s) specifically impacted.

As an association, we understand that your role in the environmental assessment process is primarily technical and that our concerns, which are Aboriginal rights, socio-economic and indigenous knowledge-based, are to fit within established scientific, technological and policy frameworks established by the Province of Ontario. We are of the view that this framework is invalid as it has been developed without input or consultation with First Nations.

Our organization receives no federal or provincial funding in helping to facilitate a mutual understanding of environmental concerns between proponents and our member First Nations. Based on this lack of understanding, funding and resources, we are only able to state that we do have member First Nations

whose traditional hunting and gathering areas may be affected by this project.

Our organization and Member Nations are usually open to participating in sustainable planning processes. However, the current federal and provincial practices in this policy area are left to the goodwill of proponents, in terms of collaborating with First Nations, and in identifying potential First Nation issues and incorporating these into the overall planning processes.

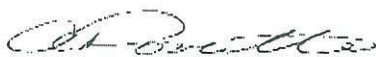
Aboriginal people are listed as "stakeholders" in environmental assessment processes, however this is only partially correct. First Nations people have collective constitutional rights, including land rights, hunting, gathering and fishing rights. The practice and recognition of these rights in southern and central Ontario is an outstanding issue between the provincial and federal governments and our member Nations. Therefore, in proposed land use situations, First Nations can seek legal remedies before the courts, including legal injunctions and other judicial intervention.

Our comments on documents produced under the current Environmental Assessment Act are as follows:

- It is our experience that when First Nations are approached respectfully and referenced in an appropriate way, that this overall approach tends to lead to more positive dialogue.
- We currently do not have the capacity to address the methodology developed for the site selection criteria and technological alternatives, at this particular time. The Proponent should use discretion in considering the selection of a site and technology that may interfere with the exercise of First Nations rights, including treaty and rights to access to wild game, water, plants, fish and ceremonial areas etc. Consideration should be put towards treaty boundary lines, real and potential land claims, and First Nations communities in the surrounding area.
- While the provincial EA legislation and EA practice may put the onus on the Proponent to consult First Nations, federal and provincial Crowns do have a constitutional obligation to uphold the rights of First Nations, and a duty to consult. The provincial and federal governments may not be forthcoming regarding this duty, as this duty currently exists in common law and is not reflected in Ontario EA legislation; which needs to be updated.
- As a safeguard, we suggest that First Nations be directly involved in the development and application of the Terms of Reference to accommodate for any potential First Nation intervention or interests. This approach would be ideal for addressing any First Nation issues that may arise. For example, where there may be archaeological discoveries at a site, First Nations customs vary and the Proponent should be ready to address that situation with the appropriate First Nations, in an innovative or other culturally appropriate manner.
- Based on archeological finds, it may be necessary to consult with other First Nations that have not been presently identified by the Ministry of the Environment or the Ontario Aboriginal Affairs Secretariat. First Nations that currently reside in the Province of Quebec may also have an interest in projects located in Ontario.

We thank you for taking the time to contact our organization and regret that we are not able to provide you with more assistance. If you have further questions or concerns please contact our office at (519) 434-2761.

Sincerely,



Adriana Poulette B.A., M.A.
Senior Policy Analyst and Government Relations Advisor
The Association of Iroquois and Allied Indians

July 30, 2007

Ms. Adriana Poulette
The Association of Iroquois and Allied Indians
387 Princess Avenue
London, ON N6B 2A7

Dear: Ms. Adriana Poulette
Senior Policy Analyst and Government Relations Advisor

**RE: Banwell Road Class Environmental Assessment Study
From Tecumseh Road East to the CPR Tracks South of Intersection Road
City of Windsor**

Thank you for your letter dated June 13, 2007. We acknowledge your concerns and comments regarding the involvement of First Nations members particularly those member Nations that may be directly impacted by this project, for example access to wild game, water, plants, fish and ceremonial areas.

We recognize the importance of good communication and intervention with the members of First Nations and below is a list the other First Nations that were contacted and provided with an opportunity to comment on the project.

- Iroquois Confederacy
- Association of Iroquois and Allied Indians
- Huron-Wendat First Nation
- Metis Nation of Ontario
- Indian and Northern Affairs Canada
- Caldwell First Nation
- Moravian of the Thames First Nation
- Walpole Island First Nation
- Six Nation of the Grand River Territory
- Can-Am Indian Friendship Centre
- Ontario Secretariat for Aboriginal Affairs
- Hiawatha First Nation
- Moose Deer Point First Nation

We will continue to keep you posted as our study progresses and advise you of opportunities to meet the study team to discuss your comments and/or concerns in person at the second public information centre scheduled in the Fall of this year. As an alternative, we would be pleased to meet with you in order to address any concerns that the Association of Iroquois and Allied Indians may have with our improvements to Banwell Road.

Thank you for your response and input. If you require further information, please do not hesitate to contact the undersigned.

Yours very truly,



Len Rach, P. Eng.
Consultant Project Manager
Environmental Planner

cc: Josette Eugeni – City of Windsor

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