

**Imperial Oil Limited
Waterdown to Finch Pipeline Project**

Application for Leave to Construct a Hydrocarbon Distribution Pipeline and Ancillary Facilities in the City of Hamilton, the City of Burlington, the Town of Milton, the Town of Oakville, the City of Mississauga and the City of Toronto (EB-2019-0007)

Submissions of The Regional Municipality of Halton

January 24, 2020

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I. Introduction

1. Imperial Oil Limited (“**Imperial**”) has filed an application with the Ontario Energy Board (the “**Board**”) under Subsection 90(1) and Section 97 of the *Ontario Energy Board Act, 1998*¹ (the “**Act**”) for leave to construct a pipeline and associated infrastructure to transport petroleum products from its facility in the City of Hamilton to its facility in the City of Toronto and approval of the forms of easement agreement related to the construction of the proposed pipeline.
2. The Regional Municipality of Halton (the “**Region**”) is an upper tier municipality comprised of four lower tier municipalities. The proposed pipeline would traverse three of the Region’s lower tier municipalities: the City of Burlington, the Town of Milton and the Town of Oakville. Within its boundaries, among other things, the Region is responsible for delivering water and wastewater services; for developing the Regional Official Plan (the “**ROP**”),² which directs how physical development should take place to meet current and future needs while protecting the Region’s natural heritage features and agricultural lands; for maintaining the Regional road system; and for developing and implementing an emergency management program. In addition, the Region is the owner of certain lands that would form part of the proposed pipeline corridor or to which Imperial seeks temporary access in order to construct the proposed pipeline.
3. Under Subsection 96(1) of the Act³, the Board shall grant leave to carry out the work if the Board is of the opinion that construction of the proposed work is in the public interest. The Region has reviewed Imperial’s Application for Leave to Construct⁴ (the “**Application**”), Environmental Report⁵ (the “**ER**”), Response to Interrogatories⁶ and Argument-in-Chief⁷ and

¹ *Ontario Energy Board Act, 1998*, SO 1998, c 15, Sched B [OEBA].

² The Regional Municipality of Halton, “Regional Official Plan” (June 2018), online: <[https://www.halton.ca/The-Region/Regional-Planning/Regional-Official-Plan-\(ROP\)/About-Regional-Official-Plan-\(ROP\)/Regional-Official-Plan-Viewer](https://www.halton.ca/The-Region/Regional-Planning/Regional-Official-Plan-(ROP)/About-Regional-Official-Plan-(ROP)/Regional-Official-Plan-Viewer)> [ROP].

³ OEBA, *supra* note 1.

⁴ Imperial Waterdown to Finch Project: Application for Leave to Construct, updated May 29, 2019 [Application].

⁵ Imperial Waterdown to Finch Project: Environmental Report, dated February 2019 [Environmental Report].

⁶ Imperial Waterdown to Finch Project: Proponent’s Response to Information Requests on the Waterdown to Finch Pipeline Application, dated August 2019 [Response to Interrogatories].

⁷ Argument-in-Chief of Imperial Oil Limited, dated January 10, 2020 [Argument-in-Chief].

submits that in order for the construction and operation of the proposed pipeline to be in the public interest, it must be subject to certain conditions. Should the Board grant leave to Imperial to carry out this work, the Region requests that the Board exercise its powers under Subsection 23(1) of the Act⁸ to impose six sets of conditions relating to:

- a. Risk management;
 - b. Regional infrastructure;
 - c. Water resources;
 - d. The Natural Heritage System, woodlands and trees;
 - e. Agricultural impacts; and
 - f. Permits and agreements with respect to Region-owned lands.
4. The conditions the Region is seeking in relation to each subject area listed above are explained in each corresponding section of these submissions, and a consolidated list of the conditions requested by the Region is provided at Appendix “A” hereto. In addition to the conditions requested in relation to the Region’s concerns, the Region also asks that the draft Conditions of Approval included in the OEB Staff Interrogatories⁹ (the “**Draft OEB Conditions**”) be imposed. The Region submits that the amendments to the Draft OEB Conditions requested by Imperial in its Argument-in-Chief¹⁰ should not be accepted by the Board. With respect to Draft OEB Condition 3, Imperial should be required to implement all of the recommendations and directives of the Ontario Pipeline Coordinating Committee, rather than just those to which Imperial is willing to commit. With respect to Draft OEB Condition 4, Imperial should not be given discretion to determine what constitutes a “material” change to Board-approved construction or restoration and warrants notice to and prior approval from the Board.
5. A liaison group of municipal governments and regulators, including the Region, the City of Mississauga, the Regional Municipality of Peel, the City of Toronto, and the Toronto and Region Conservation Authority, has collaborated regularly regarding the proposed pipeline.

⁸ *OEBA*, *supra* note 1.

⁹ OEB Staff Interrogatories EB-2019-0007, dated July 15, 2019.

¹⁰ Argument-in-Chief, *supra* note 7 at 20.

These agencies share similar concerns and have worked collaboratively to advance common interests and in the hope of assisting the Board more efficiently and effectively.

The Halton Region Official Plan

6. Pursuant to Subsection 17(13) of the *Planning Act*,¹¹ prescribed municipalities, including the Region, are required to prepare and adopt an official plan. A municipality's official plan contains goals, objectives and policies to manage and direct physical change and its effects on the social, economic, built and natural environment of the municipality.¹² All public works undertaken by the municipality and, with very limited exception, all by-laws passed by the municipality must conform with the official plan.¹³
7. Throughout these submissions, the Region will refer to various policies within its ROP and other Regional documents that support the policies of the ROP, such as the Region's Transportation Master Plan, Sustainable Halton Water and Wastewater Master Plan and the Agricultural Impact Assessment (AIA) Guidelines. These documents are the culmination of extensive study and decision-making as to future growth and the protection of valuable resources within Halton Region, and the Region submits that it is appropriate that the Board consider the policies within these documents in the context of its analysis and in reaching a decision on these applications and the conditions that should be imposed should leave to construct be granted.

II. Risk Management

8. Imperial's evidence acknowledges that there are significant risks inherent to the operation of a petroleum product pipeline, including spills, fires, explosions, incidents caused by natural disasters or security-type incidents.¹⁴ Costly and harmful incidents such as spills are more than a remote possibility; while Imperial's evidence is that the existing Waterdown to Finch segment of Imperial's Sarnia Products Pipeline ("SPPL") has operated without incident since

¹¹ *Planning Act*, RSO 1990, c P13 [*Planning Act*].

¹² *Ibid*, s 16(1)(a).

¹³ *Ibid*, s 24(1).

¹⁴ Application, *supra* note 4 at Exhibit H, Tab 2, Schedule 2, at 6, 8; Response to Interrogatories, *supra* note 6 at Appendix 4 at 3.

installation, it acknowledges that in 1989, there was a release of refined product from a portion of the SPPL system between Sarnia and Waterdown.¹⁵

9. In light of the risks inherent to operating a petroleum product pipeline, it is in the interest of the Region's residents and the public at large to ensure that a comprehensive Emergency Response Plan and appropriate financial assurances are in place in the event of a future incident. Imperial's risk assessment for the project should also be disclosed to the municipal intervenors in this proceeding, so that the municipalities are properly informed and can assess the adequacy of emergency planning relating to the potential risks.

Emergency Response

10. Ontario's *Emergency Management and Civil Protection Act*¹⁶ requires every municipality in Ontario to develop and implement an emergency management program, which includes an emergency plan governing the provision of necessary services during an emergency and the procedures under and the manner in which employees of the municipality and other persons will respond to the emergency.¹⁷ The Region's current Emergency Program and Plan came into effect on July 11, 2018.¹⁸
11. Given the Region's role with respect to emergency management and the risks inherent to the operation of a petroleum product pipeline, it is imperative that Imperial provide the Region with comprehensive emergency response information. To date, Imperial has provided the Region with an Emergency Response Plan¹⁹, including contingency plans in the case of fire or a spill.²⁰ The Emergency Response Plan provided, however, is deficient as it does not include details with respect to the following:
- a) timing and method of notifying local agencies and affected parties of an incident;
 - b) how information will be shared with the public during incident response; and

¹⁵ Response to Interrogatories, *supra* note 6, s 10.4a.

¹⁶ *Emergency Management and Civil Protection Act*, RSO 1990, c E9.

¹⁷ *Ibid*, ss 2.1, 3(1).

¹⁸ The Regional Municipality of Halton, by-law No 39-18, *Halton Region Emergency Program and Plan* (11 July 2018), online: <<https://www.halton.ca/Repository/By-law-No-39-18-Halton-Region-Emergency-Program>>.

¹⁹ Response to Interrogatories, *supra* note 6 at Appendix 4.

²⁰ *Ibid* at Appendix 2, Appendix 3.

- c) identification of which emergency response responsibilities normally assumed by the Region or other emergency service providers would be assumed by Imperial and which responsibilities the Region would be expected to provide in responding to an incident.
12. The Region identified these deficiencies in its Interrogatories.²¹ Imperial responded, in part, that it is in the process of updating the company-wide emergency response documents and will update the asset-specific plans to reflect the new pipeline in advance of commissioning. Imperial committed to providing these updated documents to the Region when available.²²
13. The Region looks forward to receipt of the updated documents. With respect to the first deficiency identified above, lack of detail with respect to timing and method of notifying local agencies and affected parties, the Region asks that Imperial include in its Emergency Response Plan direction that all non-911 notifications, which include notifications of any incidents that take place outside of Imperial's own facilities, are to be directed via e-mail to haltoncemc@halton.ca and via telephone to 311/Access Halton. With respect to information sharing, the Region asks that the Emergency Response Plan detail the steps that Imperial will take in order to disseminate information to the public in the event of an incident. Finally, generally, various emergency services are provided by the Region, including, among others, evacuations, evacuation centres, the activation of non-governmental response units and emergency public health services; Imperial should review the services set out in the Region's Emergency Program and Plan and update its Emergency Response Plan to indicate which services will be provided by Imperial and which are to be provided by the Region.
14. The Region also seeks disclosure of Imperial's final risk assessment for the project. In Imperial's Reply to the City of Toronto's motion for disclosure of certain documents (the "**Motion**"), filed with the Board October 28, 2019, Imperial agreed to produce the results of its final risk assessment for the project on a confidential basis upon submission to the Technical Standards and Safety Authority. The Board's Decision and Order with respect to the Motion, dated November 14, 2019, did not include an order for the disclosure of the risk assessment. The disclosure of this document is essential to the Region's ability to understand the risks

²¹ *Ibid*, ss 68.2, 68.3a.

²² *Ibid*, s 68.4a.

posed by the proposed pipeline project and assess the adequacy of emergency planning related thereto. Should the Board order the disclosure of any additional information relating to the assessment of risks of the proposed project, the Region requests that such order direct disclosure to all municipal intervenors.

15. The Region requests that, should the Board grant leave to Imperial to construct the proposed pipeline, it make such order subject to the following conditions:

1. At least 30 days prior to commencing construction, Imperial shall provide Halton Region with an updated Emergency Response Plan that includes the following details:
 - a) Timing and method of notifying local agencies and affected parties of an incident, including direction that all non-911 notifications, which include notifications of any incidents that take place outside of Imperial's own facilities, are to be directed to haltoncemc@halton.ca and 311/Access Halton;
 - b) How information will be shared with the public during incident response, including detailed steps that Imperial will take in order to disseminate information to the public in the event of an incident; and
 - c) Identification of which emergency response responsibilities normally assumed by Halton Region or other emergency service providers, including evacuations, evacuation centres, the activation of non-governmental response units and emergency public health services and all other services set out in Halton Region's Emergency Program and Plan, would be assumed by Imperial and which responsibilities Halton Region would be expected to provide in responding to an incident.
2. Imperial shall file with the OEB and deliver to all intervenors the final risk assessment for the pipeline project upon final submission to the Technical Standards and Safety Authority.

Financial Assurances

16. Imperial has stated that it carries third-party liability and property insurance appropriate for exposures related to its assets and operations.²³ Imperial has declined, however, to disclose the limits or deductibles associated with this coverage.²⁴ In response to the City of Toronto's request that municipalities and conservation authorities be added as additional insureds, Imperial stated that it evaluates requests for additional insured status as required.²⁵ The City of

²³ *Ibid*, s 9.4a.

²⁴ *Ibid*, ss 9.4b, 28.4bi.

²⁵ *Ibid*, s 28.4bii.

Toronto also asked whether Imperial is willing to provide an indemnity to the municipalities through which the pipeline travels, for any costs, claims and expenses they incur as a result of the proposed pipeline or the deactivated pipeline.²⁶ Imperial responded that “[i]n the unlikely event of incident, Imperial would evaluate costs or damages arising from the proposed pipeline and/or the deactivated pipeline and determine an appropriate course of action.”²⁷ Imperial’s vague and non-committal responses with respect to insurance and indemnification are inadequate.

17. As stated, Imperial has acknowledged that its operations and products present potential risks to people and to the environment.²⁸ Imperial states in its Argument-in-Chief that the cost of the proposed project will be borne by Imperial and thus costs are not relevant to the Board’s public interest determination.²⁹ While upfront costs of the project may be Imperial’s, if Imperial fails to maintain proper insurance coverage and provide appropriate indemnities to the municipalities through which the proposed pipeline would pass, these municipalities and their residents may be left to bear the economic burden of the risks acknowledged by Imperial. This result is clearly not in the public interest and thus, it is imperative that municipalities be able to satisfy themselves of the sufficiency of Imperial’s insurance coverage, be protected as additional insureds under Imperial’s insurance policies and that Imperial provide an appropriate indemnity relating to its operations.
18. To this end, the Region requests that, should the Board grant leave to Imperial to construct the proposed pipeline, it make such order subject to the following conditions:
 3. Imperial shall maintain, at its sole expense, property insurance and liability insurance (including coverage for environmental damage from spills or other incidents) in amounts that are reasonable and customary for companies of comparable size and activity, covering Imperial’s construction, operation, and decommissioning of the proposed pipeline and the decommissioning of the existing pipeline, including any activities ancillary thereto, (the “**Imperial Insurance**”) and naming The Regional Municipality of Halton as an additional insured.

²⁶ *Ibid*, s 28.3f.

²⁷ *Ibid*, s 28.4f.

²⁸ *Ibid* at Appendix 6 at 3.

²⁹ Argument-in-Chief, *supra* note 7.

4. Imperial shall provide Halton Region with certificates of insurance in respect of the Imperial Insurance recording The Regional Municipality of Halton as an additional insured prior to commencing construction. Thereafter, Imperial shall provide Halton Region with evidence of renewals of the Imperial Insurance on an annual basis in a certificate of insurance form reasonably acceptable to Halton Region.
5. Imperial shall be liable for any premiums or deductibles relating to policies under the Imperial Insurance.
6. The policies under the Imperial Insurance shall provide:
 - a) that they are primary insurance which will not call into contribution any other insurance available to Halton Region except to the extent of claims arising from the negligence of Halton Region and those for whom Halton Region is responsible in law, and;
 - b) that the Imperial Insurance shall not be cancelled, without the insurer providing at least thirty (30) business days' notice to Halton Region by registered mail.
7. Imperial shall save, defend and keep harmless and fully indemnify Halton Region from any and all claims, actions, causes of action, complaints, demands, orders, suits or proceedings of any nature or kind, and all loss, liability, judgments, costs, charges, damages, liens and expenses (including, without limitation, all legal and other professional fees and disbursements, interest, liquidated damages and amounts paid in settlement, whether from a third person or otherwise) which Halton Region may sustain, incur, or be put to by reason or arising out of or in consequence of:
 - a) the construction of the proposed pipeline, including any activities ancillary thereto;
 - b) the operation of the proposed pipeline, including any activities ancillary thereto;
 - c) the decommissioning of the existing pipeline, including any activities ancillary thereto;
 - d) the exercise by Imperial of any right or obligation under the Decision and Order in EB-2019-0007 (the “**Board’s Decision and Order**”), or;
 - e) any breach by Imperial of the Board’s Decision and Order.

Imperial's indemnity set out in this section expressly extends to all acts and omissions of Imperial's employees, officers, contractors, and agents.

III. Regional Infrastructure

19. The Region has completed infrastructure planning to the year 2031 through its Transportation Master Plan³⁰ and the Sustainable Halton Water and Wastewater Master Plan.³¹ In its Response to Interrogatories, Imperial stated that while near term infrastructure projects within Halton Region were considered in the project planning, potential infrastructure that is many years out was not considered in the detailed engineering.³² It is not clear what projects Imperial has and has not considered in its project planning and the Region remains concerned about the temporary and permanent impacts of the construction and operation of the proposed pipeline on existing and planned Regional road, water and wastewater infrastructure. Given the public resources that have been committed to developing current and future infrastructure plans and the necessity of the planned infrastructure to accommodate growth to 2031, the Region is seeking assurance that Imperial's proposed pipeline project will not preclude the Region's current or planned infrastructure, and that Imperial will address and mitigate any issues or conflicts with existing or future planned infrastructure prior to commencing construction within Halton Region. Should any work be required with respect to Regional infrastructure in order to address or mitigate any issues or conflicts with the proposed pipeline, this work would be done at Imperial's expense.
20. The Region's future infrastructure plans include certain road widening projects within the proposed pipeline project corridor. When asked how Imperial or its contractors will allow and address future road widenings within Halton Region, Imperial stated that it plans to use trenchless construction methods to cross all paved roads and that trenchless construction will

³⁰ The Regional Municipality of Halton, "Transportation Master Plan to 2031 - The Road to Change" (September 2011), online: <<https://www.halton.ca/For-Residents/Roads-Construction/Infrastructure-Master-Plans/Transportation-Master-Plan-to-2031-The-Road-to-C>>.

³¹ The Regional Municipality of Halton, "Sustainable Halton Water & Wastewater Master Plan" (October 2011), online: <<https://www.halton.ca/For-Residents/Roads-Construction/Infrastructure-Master-Plans/Sustainable-Halton-Water-Wastewater-Master-Plan>> [Water and Wastewater Master Plan].

³² Response to Interrogatories, *supra* note 6, s 65.4c.

By way of example, Imperial has not considered the construction of a new 750 mm watermain on Neyagawa Boulevard and the future extension of James Snow Parkway from Burnhamthorpe Road to Lower Base Line West in Milton planned to start in 2031 (Region Project ID 6666).

See: Water and Wastewater Master Plan, *supra* note 27 at Attachment 1.

extend a minimum of 7 metres beyond the edge of the road right-of-way in order to support the potential need for future road widening construction. Imperial also indicated that extra heavy wall thickness pipe would be used for all pipe on the proposed project and that the strength of this pipe is suitable for road crossings.³³ The Region notes that in order to protect for future road widenings, which include many cross-sectional elements such as raised medians, auxiliary lanes and active transportation facilities, the proposed pipeline must be designed and constructed to accommodate the future road widenings as well as associated construction activities a minimum of 10 metres beyond the future road rights-of-way identified in the Region's Transportation Master Plan. The additional 10 metres (5 metres on either side of the future right-of-way) is needed to accommodate road widening construction activities, including storing heavy equipment.

21. The Region appreciates Imperial's commitment to coordination discussions with the Region in support of future infrastructure growth.³⁴ Should Imperial be granted leave to construct the proposed pipeline, it will be necessary for the Region and Imperial to continue to discuss the project collaboratively going forward and for Imperial to provide proposed engineering and construction drawings for review by the Region well ahead of planned construction.
22. The Region requests that, should the Board grant leave to Imperial to construct the proposed pipeline, it make such order subject to the following conditions:
 8. The pipeline project shall not preclude the construction, maintenance or operation of Halton Region's existing or planned infrastructure, as identified in Halton Region's Transportation Master Plan and Sustainable Halton Water and Wastewater Master Plan, and Imperial shall address and mitigate any issues or conflicts between the pipeline project and the construction, maintenance or operation of Halton Region's existing or planned infrastructure in consultation with and to the reasonable satisfaction of Halton Region, having regard to acceptable municipal standards, prior to commencing construction within Halton Region. Halton Region shall have the right to perform any work with respect to Halton Region's existing and planned infrastructure that is required in order to address and/or mitigate any such issues or conflicts. Any such work will be performed at Imperial's sole expense.
 9. Imperial shall design and construct the pipeline to accommodate future road widenings, as identified in Halton Region's Transportation Master Plan, and such that the Region

³³ *Ibid*, s 65.4a.

³⁴ *Ibid*, s 65.4c.

will be able to undertake construction activities for road widenings and other infrastructure, including storing heavy equipment, up to 5 metres beyond either side of the future road rights-of-way identified in Halton Region's Transportation Master Plan.

10. Imperial shall continue to discuss the project collaboratively with Halton Region and will provide proposed engineering and construction drawings for review by Halton Region as soon as they are available, but in no case less than 90 days prior to the commencement of construction activities relating to the applicable portion of the pipeline.

IV. Water Resources

23. The Provincial Policy Statement, 2014 (the "PPS") tasks planning authorities, such as the Region, with the protection of water resources. Policy 2.2.1 states:

2.2.1 Planning authorities shall protect, improve or restore the quality and quantity of water by:

...

b) minimizing potential negative impacts, including cross-jurisdictional and cross-watershed impacts;

...

e) implementing necessary restrictions on development and site alteration to:

1. protect all municipal drinking water supplies and designated vulnerable areas; and

2. protect, improve or restore vulnerable surface and ground water, sensitive surface water features and sensitive ground water features, and their hydrologic functions;³⁵

It is through this lens that the Region provides the following comments with respect to protection of source water and groundwater supplies within Halton Region. Pursuant to Subsection 3(5) of the *Planning Act*, a decision of a board or agency of the Government of Ontario, such as the OEB, must be consistent with the PPS in respect of the exercise of any authority that affects a planning matter.³⁶

³⁵ Provincial Policy Statement 2014, Order in Council No 107/2014 and issued under section 3 of the *Planning Act*, RSO 1990, c P13, online: <<http://www.mah.gov.on.ca/AssetFactory.aspx?did=10463>>, s 2.1 [PPS].

³⁶ *Planning Act*, *supra* note 11, s 3(5).

Source Protection

24. Subsection 22(1) of Ontario's *Clean Water Act, 2006*³⁷ requires the source protection committee for each source protection area in Ontario to prepare a source protection plan, which will include, among other things, policies intended to ensure that activities that are or would be a significant drinking water threat cease to be a significant drinking water threat or never become a significant drinking water threat.³⁸ The Halton-Hamilton Source Protection Committee (the "SPC") is comprised of one-third municipal, one-third economic and one-third general public representation; the Region's Supervisor of Municipal Water Resources is one of the SPC's ten members. The SPC prepared the Source Protection Plans for the Halton Region Source Protection Area and the Hamilton Region Source Protection Area (the "**Source Protection Plan**")³⁹ based on extensive science-based assessments, consultation, collaboration and research.⁴⁰ The Source Protection Plan was approved by the then Minister of the Environment and Climate Change on August 5, 2015.⁴¹
25. The Source Protection Plan, as approved by the Province, specifically identifies the following as a local threat:

The conveyance of oil by way of a pipeline that crosses a body of open water and would be designated as transmitting or distributing "liquid hydrocarbons," including "crude oil," "condensate," or "liquid petroleum products," and not including "natural gas liquids" or "liquefied petroleum gas," within the meaning of the Ontario Regulation 210/01 under the Technical Standards and Safety Act, or is subject to the National Energy Board Act.

The inclusion of this local threat was based on event-based modelling that assessed the risk the conveyance of oil poses to lake-based drinking water sources.⁴² The event-based modelling

³⁷ *Clean Water Act, 2006*, SO 2006, c 22, s 22(1) [CWA].

³⁸ *Ibid*, s 22(2).

³⁹ Source Protection Plan for the Halton Region Source Protection Area and the Hamilton Region Source Protection Area (2015), online: <http://www.protectingwater.ca/uploads/Documents/Approved%20documents/SPPlan_v3-3_20171012_approved.pdf> [Source Protection Plan].

⁴⁰ *Ibid* at 3.

⁴¹ A subsequent amendment was approved by the Minister of Environment, Conservation and Parks on January 30, 2019.

⁴² Halton-Hamilton Source Protection Staff, *Assessment Report Halton Region Source Protection Area Version 3.5* (October 2017), online: <http://protectingwater.ca/uploads/Documents/Approved%20documents/Halton_AR_v3-5_20171012_approved.pdf> at 223.

contributed to the delineation of the event-based areas, where the above described activity is considered to be a local drinking water threat. The event-based areas are one of three types of intake protection zones and are among the vulnerable areas where Source Protection Plan policies apply.⁴³

26. As of July 1, 2018, the “establishment and operation of a liquid hydrocarbon pipeline” is also a prescribed drinking water threat under the *Clean Water Act, 2006*,⁴⁴ meaning that it is “an activity or condition that adversely affects or has the potential to adversely affect the quality or quantity of any water that is or may be used as a source of drinking water.”⁴⁵

27. As stated in Halton Interrogatory 4.23, Policy No. L-2-S of the Source Protection Plan (the “**Policy**”) states:

To reduce the risks to drinking water sources from the construction of pipelines conveying oil across open water bodies:

a. the National Energy Board and the Ontario Energy Board in their consideration of any oil pipeline application where this activity would be a significant drinking water threat are requested to ensure that the applicant has complied with or included appropriate design standards, monitoring, and maintenance practices that when implemented will prevent a pipeline from becoming a significant drinking water threat.

*b. the Source Protection Department of the Halton Region and Hamilton Conservation Authorities shall consult with the National Energy Board and the Ontario Energy Board to determine if pipeline design standards and the requirements for monitoring and maintenance practices in vulnerable areas consider drinking water source protection, such as the use of isolation valves at either side of creek crossings.*⁴⁶ [emphasis added]

28. The Policy indicates that Halton Region and Hamilton Conservation Authorities shall consult with the Board with respect to the construction of pipelines conveying oil products across open water bodies. In this case, Conservation Halton (“**CH**”) has directed Imperial to consult with

This modelling involved the simulation of spills at two locations within Halton Region, Sixteen Mile Creek and Joshua’s Creek, and indicated that a release from a rupture of a pipeline into Sixteen Mile Creek and Joshua’s Creek will significantly affect the quality of source water at some intakes in Halton Region, Hamilton, and Mississauga.

⁴³ *Ibid* at 142.

⁴⁴ O Reg 287/07, s 1.1(1)22.

⁴⁵ CWA, *supra* note 37, s 2(1).

⁴⁶ Source Protection Plan, *supra* note 39 at 59.

Halton Region with respect to source protection policies that may apply to this project⁴⁷ and the Region views the within submissions and Condition 11 requested below as part of consultation between local agencies and the Board.

29. Specifically, the Policy, which was approved by the Province and developed in consideration of comments received from some pipeline companies,⁴⁸ indicates that there must be consultation between local authorities and the Board to determine whether the proposed pipeline design standards (as well as monitoring and maintenance practices) in vulnerable areas consider drinking water source protection. The Policy identifies the use of isolation valves at either side of creek crossings as one such design standard to be considered during consultation between local authorities and the Board. The proposed pipeline would cross three creeks within the vulnerable areas of Halton Region.⁴⁹ These creeks extend downstream to the Region's Lake Ontario intake protection zone. Installing an isolation valve at either side of a creek reduces the volume of product released to the creek in the event of a pipeline failure.
30. In Halton Interrogatory 4.23, the Region requested that Imperial describe how its proposal complies with appropriate design standards, monitoring, and maintenance practices to prevent the proposed pipeline from becoming a significant threat to the Region's drinking water sources.⁵⁰ Imperial's response includes a summary of the proposed infrastructure and processes intended to limit the risks associated with pipeline operations. The proposed infrastructure summarized includes mainline valves. However, Imperial's response indicates that there is only one mainline valve proposed within vulnerable areas in Halton Region. Imperial proposes to locate the single mainline valve at the west side of Sixteen Mile Creek.⁵¹
31. Imperial's response to Halton Interrogatory 4.23 does not indicate a technical rationale for the proposed location of the mainline valve and it is not clear that a single mainline valve within the Region's vulnerable areas is sufficient to manage the potential risks to the Region's

⁴⁷ Response to Interrogatories, *supra* note 6 at Appendix 12 at 17, para 8.

⁴⁸ Ruth Victor and Associates and Halton-Hamilton Source Protection Staff, *Explanatory Documents to Support the Source Protection Plans for the Halton Region Source Protection Area and the Hamilton Region Source Protection Area Version 2.5* (October 2017), online:

<http://protectingwater.ca/uploads/Documents/Approved%20documents/Explanatory_document_20171012_r.pdf>
at 194.

⁴⁹ Sixteen Mile Creek, East Sixteen Mile Creek, and Joshua's Creek.

⁵⁰ Response to Interrogatories, *supra* note 6, s 94.3a.

⁵¹ *Ibid*, s 94.4a.

drinking water. The Region remains concerned that the design proposed by Imperial does not sufficiently consider drinking water source protection. As such the Region requests that, should the Board grant leave to Imperial to construct the proposed pipeline, it make such order subject to the following condition:

11. In consideration of Policy No. L-2-S(b) of the Source Protection Plans for the Halton Region Source Protection Area and the Hamilton Region Source Protection Area, Imperial shall include in its plans and install mainline valves at either side of creek crossings within Halton Region's vulnerable areas or provide a technical rationale for why additional mainline valves are not feasible in these locations to the reasonable satisfaction of Halton Region.

Groundwater Supply

32. There are numerous private wells and ponds along the planned pipeline corridor within Halton Region. In its interrogatories, the Region asked Imperial to describe measures that would be taken to identify on-farm water sources that could be affected by the proposed pipeline project and measures that would be taken to avoid disruption of those water sources.⁵² The Region also asked for confirmation that a well survey would be undertaken prior to construction to determine the status, condition, current use and water levels of existing wells, and stated that the monitoring of wells must continue during and post-construction.⁵³ Imperial responded as follows:

To identify on-farm water sources that could be affected by the Project, up-to-date well records will be reviewed prior to a planned 2019 pre-construction well survey. Measures to be taken to avoid disruption of water sources for households and farms may include seasonally planning construction activities to minimize dewatering requirements, as practical.⁵⁴

...

A well survey will be completed in advance of construction of the Project. Landowners with domestic well supplies will be contacted to request permission for pre-construction monitoring that would include water quality sampling and/or water level measurements dependent on accessibility of the well. Post-construction well monitoring will be done at the request of the landowner.

Predicted water drawdown and a zone of influence was assessed in support of the Water Taking Permit application. Potential impacts from construction dewatering activities

⁵² *Ibid*, s 76.3b.

⁵³ *Ibid*, s 77.3b.

⁵⁴ *Ibid*, s 76.4a.

include a short term reduction in water levels for any water sources located within the zone of influence. However, negative effects requiring adjustments or repairs to wells are not anticipated due to the short duration of the work. A Communication Plan will be developed prior to construction and will include the protocol for addressing any landowner concerns related to impacts to groundwater wells.⁵⁵

33. Thus, Imperial has agreed that it will conduct a well survey in advance of the construction of the Project. Imperial's survey should not be limited to wells, however, and should include all groundwater based supplies in order to address local conditions. While the OEB Guidelines speak specifically to well surveys, the Region submits that it is appropriate for the Board to impose a condition of approval requiring Imperial's work to extend to all groundwater based supplies, as Provincial direction, as set out in Policy 2.2.1 of the PPS, requires planning authorities to protect the quality and quantity of water by implementing necessary restrictions on development and site alteration to protect all vulnerable groundwater and sensitive groundwater features, and their hydrologic functions.
34. In Halton Interrogatory 4.7.3, the Region also asked Imperial to address mitigation measures for potential effects on groundwater quality and quantity. Imperial advised that key mitigation measures for groundwater-related matters would be addressed in its Environmental Protection Plan ("EPP") and associated Water Management Plan ("WMP").⁵⁶
35. Much of the information provided in the ER with respect to groundwater and wells was preliminary and broadly scoped; much of the detail was left to the EPP and WMP which are still to be prepared. The Region is seeking assurance that Imperial will take certain measures to ensure that groundwater is properly surveyed and monitored and that appropriate mitigation measures are developed and implemented. These measures are set out in Condition 12 requested below.
36. The Region requests that, should the Board grant leave to Imperial to construct the proposed pipeline, it make such order subject to the following condition:
12. In order to ensure there is no long-term adverse impact on quality and quantity of groundwater-based supplies (supplies include private groundwater wells, groundwater-based springs/seeps, and groundwater fed ponds), Imperial shall:

⁵⁵ *Ibid*, s 77.4b.

⁵⁶ *Ibid*, s 78.4a.

- a) Prior to construction, give notice to and seek permission from landowners to undertake surveying, and conduct baseline monitoring and testing of all accessible private groundwater-based supplies within the Zone of Influence (ZOI) of the proposed construction. All monitoring and testing shall be in accordance with the applicable guidelines and regulations.
- b) Ensure representative monitoring of affected groundwater zones, and adequate frequency of monitoring pre, during and post construction to assess impacts (if any) of construction on the groundwater based supplies.
- c) Reassess ZOI based on the monitoring data collected during construction and adjust monitoring activities as required. The post-construction monitoring shall be of sufficient duration to establish return to natural conditions at each monitored location.
- d) Develop locally-applicable, measurable and implementable approaches to mitigation of impacts to private water supplies in Halton Region. Ensure any investigations in response to residents' complaints and any required implementation of mitigation and contingency measures are prompt and at no cost to residents.
- e) The results of the baseline survey, monitoring and testing and the proposed mitigation measures shall be in a report form. The report shall be submitted to the OEB and Halton Region at least 75 days prior to planned commencement of construction within Halton Region and Halton Region shall have the right to have the report peer reviewed at Halton Region's expense and to submit such peer review to the OEB and Imperial within 45 days of receipt of Imperial's report. Based on the findings and/or recommendations of the peer review, the OEB may direct Imperial to revise its report for resubmission to the OEB and Halton Region prior to commencement of construction.
- f) Advise Halton Region of any resident complaint and/or adverse impact of the pipeline project on quality or quantity of groundwater-based supplies as soon as Imperial becomes aware of any such complaint or adverse impact.
- g) Make all information gathered with respect to groundwater-based supplies available to the OEB and Halton Region upon request pre, during and post-construction. Imperial shall also prepare a Halton Region-specific report (or Halton Region-specific portion of a report) containing all information with respect to groundwater-based supplies gathered pre, during and post-construction in Halton Region and submit it to the OEB and Halton Region within 90 days of completing construction of the pipeline.

V. The Natural Heritage System, Woodlands and Trees

The Natural Heritage System

37. Natural Heritage System (the “NHS”) is a term used in the ROP that encompasses both the Regional Natural Heritage System (the “RNHS”) and the Greenbelt Natural Heritage System (the “GNHS”).⁵⁷ The RNHS is a land use designation within the ROP, meaning that areas identified as RNHS are governed by policies and permitted uses identified in the ROP, while the GNHS is an overlay that serves to implement the policies of the Provincial Greenbelt Plan as they apply to the Province’s Natural Heritage System.⁵⁸ The goal of the NHS is to increase the certainty that the biological diversity and ecological functions within Halton Region will be preserved and enhanced for future generations.⁵⁹ This goal and the policies that support it are consistent with Provincial direction with respect to the protection of natural features and areas, as set out in Policy 2.1 of the PPS.⁶⁰
38. In its Interrogatories, the Region requested that Imperial include mapping and description of ROP designations and overlays that apply to the proposed project corridor in Imperial’s ER.⁶¹ Imperial’s response to this request did not provide the requested mapping or description of the applicable designations and overlays.⁶²
39. The Region’s main interest with respect to the mapping and description of ROP designations and overlays is to see that Imperial has mapped areas within the project corridor that are subject to the RNHS designation and/or the GNHS overlay and identified ROP policies that are applicable to these areas. Section 118 of the ROP provides the Region’s policies with respect to the RNHS. As an example of a specific policy applicable to areas designated RNHS, Subsection 118(2)(b) provides that alteration of any components of the RNHS will not be permitted unless it has been demonstrated that there will be no *negative impacts* on the *natural*

⁵⁷ ROP, *supra* note 2, s 113.

⁵⁸ *Ibid*, s 139.3.1.

⁵⁹ *Ibid*, s 114.

⁶⁰ PPS, *supra* note 35, s 2.1.

⁶¹ Response to Interrogatories, *supra* note 6, s 73.3a.

⁶² *Ibid*, s 73.4a.

features and areas or their *ecological functions*.⁶³ The ROP policies with respect to the GNHS are set out at Section 139.3.7. As an example of a specific policy applicable to areas subject to the GNHS overlay, Subsection 139.3.7(1) provides that *development* and *site alteration* within the *Key Features* of the GNHS is prohibited, except in accordance with the policies of the ROP.⁶⁴

40. In its Interrogatories, the Region also asked that Imperial accurately identify components of the RNHS, as identified in Section 115.3 of the ROP, on the Environmental Features Map included at Appendix D of the ER.⁶⁵ While Imperial's response indicated that all components of the RNHS are mapped in Appendix D or Figure 4.4-1 of the ER,⁶⁶ this is not accurate. For example, the components of the RNHS include *buffers*, *linkages* and *enhancements to Key Features*; Imperial has not mapped these components. It is important to identify all components of the RNHS and ROP policies that apply to those components, as the RNHS is a systems approach to protecting and enhancing *natural features* and functions.⁶⁷
41. Clearly identifying NHS lands and components of the RNHS within the project corridor using mapping, and setting out the ROP policies that govern Imperial's operations with respect to those lands and components, are necessary first steps in order for Imperial to properly plan for the protection of the NHS. This work will help to ensure that suitable consideration of impact avoidance and mitigation occurs at the EPP development stage and that Imperial's Reclamation Plan, as described by Imperial in its response to Halton Interrogatory 4.21,⁶⁸ provides for suitable compensatory and enhancement measures to address any residual *negative impacts* of the pipeline project on the NHS.

⁶³ ROP, *supra* note 2, s 118(2)(b).

Italicized terms used within Part V of the Region's Submissions indicate defined terms within the ROP.

⁶⁴ *Ibid*, s 139.3.7(1).

⁶⁵ Response to Interrogatories, *supra* note 6, s 96.3a.

⁶⁶ *Ibid*, s 96.4a.

⁶⁷ ROP, *supra* note 2, s 115.3.

⁶⁸ Response to Interrogatories, *supra* note 6, s 92.4a.

Woodlands and Trees

42. In its interrogatories, the Region requested that Imperial provide a figure showing *woodlands* and *significant woodlands* within the Halton Region portion of the proposed project corridor, indicating that these features should be identified in accordance with the definitions contained in Sections 295 and 277 of the ROP.⁶⁹ The Region appreciates Imperial's efforts to provide such mapping, as set out at Appendix 18 of Imperial's Response to Interrogatories.⁷⁰ Upon review, however, this mapping is incorrect. This is due to the process used by Imperial to map woodlands, as described in Section 4.3.1.3 of Imperial's ER,⁷¹ which was based on the results of an Ecological Land Classification ("ELC") analysis and not in accordance with Section 295 of the ROP, which requires identification of *woodlands* based on tree densities. By using the wrong analysis, Imperial has not properly identified all *woodlands* within the project corridor.
43. In particular, the Region notes that Imperial's mapping does not include certain *woodlands* that the Region considers as candidates for designation as *significant woodlands*.⁷² In order for an area to be designated as a *significant woodland*, it must first meet the definition of *woodland*, which again, is a function of tree density within the area. Pursuant to Section 277 of the ROP, additional factors, including but not limited to size and age of the *woodland*, are considered in order to determine whether a *woodland* is a *significant woodland*. Whether these additional criteria are met must ultimately be determined through a Watershed Plan, a sub-watershed study or a site-specific Environmental Impact Assessment ("EIA"), or an equivalent study based on terms of reference acceptable to the Region.⁷³ Imperial's EPP will be a form of EIA and is an appropriate study through which to identify *significant woodlands*. As the ROP identifies *significant woodlands* as *Key Features* within (i.e. components of) the RNHS, any *woodlands* that are candidate for designation as *significant woodlands* based on the criteria set out in Section 277 of the ROP should be identified in Imperial's mapping of components of

⁶⁹ *Ibid*, s 72.3a.

⁷⁰ *Ibid* at Appendix 18.

⁷¹ Environmental Report, *supra* note 5, s 4.3.1.3.

⁷² For example, CUT1 ELC communities in the vicinity of WO11 and WO18.

⁷³ ROP, *supra* note 2, s 277.

the RNHS and ROP policies applicable thereto should be described, as outlined in paragraphs 37-38 of these Submissions.

44. While *woodlands* that do not qualify as *significant woodlands* are not components of the RNHS, Regional By-law No. 121-05,⁷⁴ a by-law to prohibit and regulate the destruction or injuring of trees within Halton Region (the “**Tree By-law**”), applies to all *woodlands*.⁷⁵ The Tree By-law contains a general prohibition that “no person or corporation through their own actions or through any other person or corporation shall destroy or Injure any Tree located in Greenlands or in Woodlands 0.5ha or larger”⁷⁶ subject to certain exceptions. All *woodlands*, including *significant woodlands* as defined in the ROP, that fall within the project corridor should be mapped and the provisions of the Tree By-law that apply to them should be described as a basis to ensure that suitable consideration of impact avoidance and mitigation occurs at the EPP development stage and that Imperial’s Reclamation Plan provides for suitable compensatory and enhancement measures.
45. In addition to the ROP policies and Tree By-law provisions relating to *woodlands* and *significant woodlands*, the ROP contains policies that apply to *trees* and *treescapes* more generally. For example, Subsection 147(6)b) provides that it is the policy of the Region to “[r]etain *treescapes* along major transportation corridors, replace *trees* cut down for public works and, wherever possible, develop new *treescapes* consistent with safe and aesthetically pleasing road or corridor design.”⁷⁷ ROP policies of general applicability to *trees* and *treescapes* should also be clearly identified by Imperial and should be used to inform the development of the EPP and Reclamation Plan.
46. In Halton Interrogatory No. 4.21, the Region asked Imperial to confirm that a Reclamation Plan will be prepared to the satisfaction of the Region, noting that all tree removal associated

⁷⁴ The Regional Municipality of Halton, by-law No 121-05, *Tree By-law* (5 October 2005) online: <<https://www.halton.ca/getmedia/c43258a3-5f6a-4a4a-84a3-ebc3ea974af8/CAO-by-law-121-05.aspx>> [*Tree By-law*].

Pursuant to subsection 135(2) of the *Municipal Act, 2001*, an upper-tier municipality may prohibit or regulate the destruction or injuring of trees in woodlands designated in the applicable by-law.

⁷⁵ The definition of “woodland” within the *Tree By-law* mirrors the definition of such within the ROP.

⁷⁶ *Tree By-law*, *supra* note 70, s 3(a).

⁷⁷ ROP, *supra* note 2, s 147(6)b).

with the proposed pipeline construction must be authorized in accordance with the Tree By-law.⁷⁸ Imperial's response indicated that all affected Conservation Authorities and municipalities, including Conservation Halton and Halton Region, will be consulted for vegetation removal compensation and that the Reclamation Plan will include appropriate replacement ratios and accommodate, to the extent possible, enhancement of ecological function and structure of the RNHS.⁷⁹ Given the Region's role in enacting and enforcing the Tree By-law, as well as setting land use policies through the ROP, the Region is seeking more concrete assurance as to the content of the EPP and the Reclamation Plan, as well as an opportunity to have each of these documents peer reviewed.

47. The Region requests that, should the Board grant leave to Imperial to construct the proposed pipeline, it make such order subject to the following condition:

13. In consideration of Policy 2.1 of the PPS, Sections 118,139.3.7, 147(6)b) and all other applicable policies of the Halton Region Official Plan, and the Halton Region Tree By-law (By-law No. 121-05), at least 75 days prior to planned commencement of construction or vegetation clearing within Halton Region, Imperial shall submit to the OEB and Halton Region:

- a) an Environmental Protection Plan that details impact avoidance and mitigation measures required to address the protection and enhancement of the *natural features* of the Regional Natural Heritage System and the Greenbelt Natural Heritage System overlay and/or their *ecological functions* as well as *trees*, *treescapes* (each preceding italicized term as defined in the ROP) and *woodlands* (as defined in the ROP and the Tree By-law) and is inclusive of and informed by:
 - i. maps of portions of the project corridor that are designated Regional Natural Heritage System and/or subject to the Greenbelt Natural Heritage System overlay and descriptions of ROP policies applicable thereto;
 - ii. maps of *woodlands* within the project corridor and descriptions of Tree By-law provisions applicable thereto;
 - iii. maps of all components of the Regional Natural Heritage System, as outlined in Section 115.3 of the ROP, including unmapped *Key Features* not shown on Map 1G of the ROP, that are within the project corridor and descriptions of ROP policies applicable thereto; and

⁷⁸ Response to Interrogatories, *supra* note 6, s 92.3a.

⁷⁹ *Ibid*, s 92.4a.

- iv. descriptions of ROP policies applicable to *trees* and *treescapes*; and
- b) a Reclamation Plan that details compensatory restoration/enhancement measures to address any residual *negative impacts* (as defined in the ROP) of the pipeline project on *natural features* of the Regional Natural Heritage System and the Greenbelt Natural Heritage System overlay and/or their *ecological functions*, and any destruction or injuring of *woodlands, trees* and *treescapes*.

Halton Region shall have the right to have the EPP and/or Reclamation Plan peer reviewed at Halton Region's expense and to submit such peer review to the OEB and Imperial within 45 days of receipt of Imperial's EPP and Reclamation Plan. Based on the findings and/or recommendations of the peer review, the OEB may direct Imperial to revise its EPP and/or Reclamation Plan for resubmission to the OEB and Halton Region prior to commencement of construction.

VI. Agricultural Impacts

48. The proposed pipeline corridor would traverse certain agricultural lands within Halton Region.⁸⁰ Halton Region is home to an active and vibrant farming industry, which includes a wide range of farming types, including livestock operations, cash crops, fruit and vegetable growers, horse farms and nurseries, among other things. It is essential that Imperial's pipeline proposal include proper consideration of impacts on agriculture and mitigation measures to be implemented.

Agricultural Impact Assessment

49. Imperial's Application and Response to Interrogatories provide limited commentary with respect to impacts of the proposed pipeline on agriculture. The Region is seeking from Imperial an Agricultural Impact Assessment ("AIA"), evaluating the full impacts of the pipeline project on agriculture within Halton Region and mitigation measures to be put in place, as requested in Halton Interrogatory No. 4.2.⁸¹ Imperial asserts in its Response to Interrogatories that an AIA is not required for the proposed pipeline and that the level of analysis provided in the ER

⁸⁰ This can be seen by comparing the proposed pipeline route shown on Imperial's Map of Project (see Application, *supra* note 4 at Exhibit C, Tab 1, Schedule 2, at 3) with Map 1 and Map 1E of the ROP (see ROP, *supra* note 2, Map 1, Map 1E).

⁸¹ Response to Interrogatories, *supra* note 6, s 71.3b.

is sufficient for its application to the OEB.⁸² The Region disagrees. Imperial's response to Halton Interrogatory No 4.2 also states that "[n]et adverse effects of the Project on existing agriculture are likely, but are considered to be not significant."⁸³ Query on what basis Imperial could determine that adverse effects of the proposed pipeline are not significant, when identification and assessment of the potential adverse effects has not been completed.

50. Both the OEB Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario⁸⁴ (the "OEB Guidelines") and the ROP (and associated Regional guidelines) require a fulsome analysis of the impacts of a proposed project on agriculture. This requirement is consistent with Provincial direction with respect to the protection of agricultural lands, as set out in Policy 2.3 of the PPS.⁸⁵

51. While the OEB Guidelines do not use the term "Agricultural Impact Assessment", they require the completion of an Environmental Report that includes significant assessment with respect to impacts on agriculture. Some of the relevant provisions of the OEB Guidelines are as follows:

- Section 4.2.3 Route or Site Description: This section requires the inclusion of maps or recent air photo mosaics, which illustrate the environmental setting of the preferred pipeline route or facilities sites. The section states in part:

In addition to the proposed general route or site location and alternatives considered, the list below provides those features and resources which may need to be identified on the maps or photo mosaics, if they are traversed by, or are adjacent to, the preferred route or site:

...

(b) prime agricultural land and agricultural land use such as croplands (e.g. corn, soybeans, hay), specialty crops (e.g. orchards, vineyards,

⁸² *Ibid*, s 84.4a.

⁸³ *Ibid*, s 71.4a.

⁸⁴ Ontario Energy Board, *Environmental Guidelines for Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario* 7th Edition (2016), online: <<https://www.oeb.ca/sites/default/files/uploads/documents/regulatorycodes/2019-01/Environmental-Guidelines-HydrocarbonPipelines-20160811.pdf>> at 28-29, 34-35 [OEB Guidelines].

⁸⁵ PPS, *supra* note 35, s 2.3.

In particular, Policy 2.3.6.2 states that "[i]mpacts from any new or expanding non-agricultural uses on surrounding agricultural operations and lands are to be mitigated to the extent feasible."

vegetables), pasture, grazing land, sugar bushes; tile drained land or other environmental improvements;

(c) farm enterprises/buildings (e.g. greenhouses, livestock facilities such as beef feedlots, dairy farms, poultry barns);⁸⁶

- **Section 4.3 Impact Identification and Assessment:** This section requires the evaluation of alternative routes and sites by assessing for each comparison of alternatives the impacts on the natural, built, social, cultural and economic components of the environment. One such component for which impacts must be assessed is agricultural land. Section 4.3.5 states in part:

Where all the possible alternatives affect prime agricultural lands, priority for avoidance should be given to specialty crop lands followed by class 1-4 soils, in descending order. Consideration should also be given to other priority rating factors such as:

(a) extent of capital investment in farm buildings, drainage systems, irrigation systems, capital and other improvements;

(b) the type of existing farm operations; and

(c) continuity of the agricultural land base.

Pipeline or station construction and operation may impact tilling, crop harvesting and rotations, specialty crops, intensive livestock or poultry operations. These features should be identified and the impacts to them minimized.

If it is essential that the route or site traverse prime agricultural lands, all reasonable efforts to parallel property lines and other rights-of-way should be made. Diagonal field severance should be avoided. In addition, every attempt must be made to ascertain the location and extent of existing and planned tile drainage systems.⁸⁷

Pursuant to Section 4.3.8, another component in relation to which impacts should be identified and assessed is water wells and hydrology:

A survey of water wells along, and adjacent to, the preferred route or site must be conducted. The MOECC Regional Office should be contacted to obtain water well records and relevant associated data. ...

⁸⁶ OEB Guidelines, *supra* note 84, ss 4.2.3(b), (c).

⁸⁷ *Ibid* at s 4.3.5.

*Monitoring of the water wells should be carried out where blasting, dewatering or work below the water table is required. If claims of water supply interference arise as a result of construction activity, it is necessary to obtain data on historical and pre-construction water quality and quantity.*⁸⁸

- Chapter 5 Impact Mitigation: This chapter describes mitigation measures to be applied for the reduction and management of construction impacts on the environment. Section 5.5.2 addresses mitigating impacts of construction on agricultural drains:

If agricultural land that is extensively tile drained cannot be avoided, mitigation plans must be developed and implemented prior to construction. The plans should be designed to maintain proper subsurface drainage during and after pipeline construction.

*Consultation with the landowner prior to construction is necessary to determine the location of existing and planned tile drains. If a landowner is not aware of the location or existence of tile drains, OMAFRA may be contacted or a knowledgeable local tile contractor should be consulted, in order to verify the depth and frequency of any installed tiles. The depth of the proposed pipeline should be compatible with existing and planned drainage systems.*⁸⁹

52. The ROP states the following with respect to the Agricultural System and Agricultural Area within Halton Region:

101. It is the policy of the Region to:

...

(2) Recognize, encourage and protect agriculture as an important industry in Halton and as the primary long-term activity and land use throughout the Agricultural System, and to this end:

...

*e) Require the proponent of any non-farm land use that is permitted by specific policies of this Plan but has a potential impact on adjacent agricultural operations to carry out an Agricultural Impact Assessment (AIA), based on guidelines adopted by Regional Council.*⁹⁰

53. The Region's Agricultural Impact Assessment (AIA) Guidelines (the "**Regional Guidelines**") provide that, generally, AIAs will: identify possible adverse impacts on agriculture; identify additional restrictions that may impact abutting agricultural operations as a result of the development; identify and evaluate locational options for the proposed development and

⁸⁸ *Ibid*, s 4.3.8.

⁸⁹ *Ibid*, s 5.5.2.

⁹⁰ ROP, *supra* note 2, s 101(2)(e).

demonstrate that the proposed location is the preferred option in terms of minimizing the impact on agriculture; and identify methods of removing or reducing any adverse impacts resulting from the development.⁹¹ More specifically, the Regional Guidelines provide that an AIA should include the following, among other things:

- a description of on-site features, such as type and intensity of existing agricultural production, parcel size, shape and accessibility, and capital investments in agriculture (including tile drainage);⁹² and
- an assessment of the impacts of the proposal on the agricultural community, existing and potential farming operations on surrounding lands (including potential impacts on existing wells), the existing agricultural character of the area, and cumulative impacts in the context of other decisions in the area.⁹³

54. The OEB Guidelines are informative as to how information related to agricultural operations in proximity to the proposed pipeline should be gathered. Generally, the OEB Guidelines require public consultation with those who may be affected by a project. Section 3.4.2 provides that landowner interviews are a recommended method of public consultation and states:

Landowner interviews should address:

- (a) existing and planned features (e.g. wells, buildings, subsurface drainage tiles, cropping systems, special agricultural enterprises, woodlot management plans);*
- (b) environmental features, including features of cultural heritage value;*
- (c) siting or routing preference, including mitigation and monitoring measures;*
- (d) potential temporary or permanent access to the easement;*
- (e) concerns regarding previous pipeline or station construction;*
- (f) current farm or business operations, including conservation practices;*
- (g) the number of occupants and any particular sensitivities those occupants may have to construction impacts, such as noise and dust; and,*
- (h) any potential restrictions on the location of planned buildings or structures.*⁹⁴[emphasis added]

⁹¹ The Regional Municipality of Halton, *Regional Official Plan Guidelines: Agricultural Impact Assessment (AIA) Guidelines* (2014), online: <<https://www.halton.ca/getmedia/80018b1c-0530-49cd-944d-7c1e48152dee/LPS-rop-guidelines-aia-guidelines.aspx>>, s 1.2 [Regional Guidelines].

⁹² *Ibid*, s 2.4.

⁹³ *Ibid*, s 2.7.

⁹⁴ OEB Guidelines, *supra* note 84, s 3.4.2.

55. Imperial should undertake interviews addressing these topics with landowners who may be impacted by the proposed pipeline as an initial step in completing an AIA or equivalent assessment. In particular, the Region requests that Imperial identify (a) parcels of land with tile drainage, (b) on-farm water sources that could be affected by the pipeline project, particularly where livestock may be impacted and (c) on-site features, such as type and intensity of existing agricultural production and parcel size, shape and accessibility. This information should be gathered early on in project planning so that it can be used to inform the development of mitigation strategies to be employed during construction and as a baseline for evaluating compensation to impacted farmers.
56. The lands with respect to which interviews should be undertaken and to which the agricultural assessment should relate, include, at a minimum, the entirety of all land parcels through which the proposed pipeline would pass (the primary study area), as well as lands within 1 kilometer of the property boundary of those lands through which the proposed pipeline would pass (the secondary study area).⁹⁵ The exact study area must be determined based on area features⁹⁶ and should be established to ensure that all reasonable alternatives and their impacts can be evaluated.⁹⁷
57. The Region requests that, should the Board grant leave to Imperial to construct the proposed pipeline, it make such order subject to the following condition:
14. Imperial shall complete an Agricultural Impact Assessment (AIA) or equivalent assessment of the project's impacts on the agricultural system in Halton Region and appropriate mitigating measures to be taken by Imperial, in accordance with the OEB Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario and Policy 2.3.6.2 of the Provincial Policy Statement and in consideration of Subsection 101(2)(e) of the ROP (and the associated Halton Region Agricultural Impact Assessment (AIA) Guidelines). The agricultural assessment shall be submitted to the OEB and Halton Region at least 75 days prior to planned commencement of construction within Halton Region and Halton Region shall have the right to have the assessment peer reviewed at the Region's expense and to submit such peer review to the OEB and Imperial within 45 days of

⁹⁵ Regional Guidelines, *supra* note 91, s 2.5a. A secondary study area of 1 km from the property boundary of the subject site is suggested in the Regional Guidelines.

⁹⁶ *Ibid* at 5, n 3.

⁹⁷ OEB Guidelines, *supra* note 84 at 24.

receipt of Imperial's report. Based on the findings and/or recommendations of the peer review, the OEB may direct Imperial to revise its assessment, including any mitigating measures to be implemented, for resubmission to the OEB and Halton Region prior to commencement of construction.

14.1 As part of completing the agricultural assessment, Imperial shall conduct interviews with all landowners who may be impacted by the pipeline project in order to gather, at a minimum, information relating to tile drainage, on-farm water sources and on-site features, such as type and intensity of existing agricultural production and parcel size, shape and accessibility.

Mitigating Impacts on Agricultural Operations

58. In response to Halton Interrogatory No. 4.13, Imperial confirmed that compensation agreements will be established with farming operations directly affected by the proposed pipeline.⁹⁸ Imperial further advised as follows

Imperial will pay compensation for a five year period to affected landowners for decreases in farming output/revenue during this time which is expected to fully compensate for any losses. If landowners advise Imperial of yield reductions after the 5 year term, Imperial will work with them to assess the concerns at that time to determine appropriate mitigations.

The Region is seeking assurance that Imperial will enter into compensation agreements with all farmers and/or landowners who may suffer losses in productivity or revenue as a result of the pipeline project. Such agreements should provide for at least 5 years of compensation, a mechanism for claiming compensation thereafter, and should stipulate that losses in productivity shall be compensated based on the market values of applicable commodities. The Region notes that Section 14 of Imperial's proposed Grant of Easement Pipeline (Ontario) Agreement⁹⁹ ("**Imperial's Easement Agreement**") provides that Imperial shall compensate those who grant easements to Imperial for direct damages (but not indirect or consequential damages) suffered as a result of Imperial's operations, pipelines or abandoned pipelines. Such a limitation on compensable damages would not provide sufficient protection to farmers and/or landowners and the Region submits that Imperial should be required to provide farmers and/or landowners with compensation for damages of all kinds suffered as a result of Imperial's

⁹⁸ Response to Interrogatories, *supra* note 6, s 84.4b.

⁹⁹ Argument-in-Chief, *supra* note 7 at Appendix B.

operations, pipelines or abandoned pipelines. Farmers and/or landowners who may suffer losses in productivity or revenue as a result of the pipeline project should be identified by Imperial through the AIA requested by the Region in Condition 14 above.

59. The Region provides one additional comment with respect to Imperial's Easement Agreement: in Section 10, which sets out rights to which the grantor of the easement retains with respect to the easement lands, Imperial uses the term "ordinary farming practices".¹⁰⁰ The Region recommends that this term be replaced with the term "normal farm practices", as this term is defined in Ontario's *Farming and Food Production Protection Act, 1998*¹⁰¹ and commonly used and understood by Ontario's agricultural community.
60. In its Interrogatories, the Region asked Imperial to explain how it will accommodate access needs of large farm equipment, which may conflict with construction activities and which equipment may need to cross Imperial's work area if there is no alternative access to agricultural lands. Imperial responded as follows:

*As detailed in Table 5.4-1 (Section 5.4.1, page 5-26) key mitigation for the potential effect of restricted access to land and use of land includes: communication of access to properties and construction activities in advance of any planned work; maintaining sufficient breaks in soil windrows during planting and harvesting season to permit landowner access to adjacent fields; communication with affected landowners in advance of any reduced or restricted access; and containing all work within agreed right-of-way and construction workspaces. This mitigation includes accommodating access needs of large farm equipment, to the extent possible. If Imperial is unable to accommodate reasonable access across the construction footprint, Imperial will work with landowners to compensate for stranded lands that cannot be farmed. Imperial will continue to maintain open lines of communication during the construction phase and will work cooperatively with farmers to avoid or minimize any impacts on farming activities.*¹⁰²

The Region seeks specific assurance that Imperial will provide reasonable notice in writing of road narrowings and closures that could impede farm equipment moving through the area to farmers and landowners who may be impacted. Imperial should identify farmers and

¹⁰⁰ *Ibid.*

¹⁰¹ *Farming and Food Production Protection Act, 1998*, S.O. 1998, c. 1.

¹⁰² Response to Interrogatories, *supra* note 6, s 85.4b.

landowners who may be impacted by road narrowings and closures through the AIA requested by the Region in Condition 14 above.

61. The Region requests that, should the Board grant leave to Imperial to construct the proposed pipeline, it make such order subject to the following conditions:

15. Prior to commencing construction, Imperial shall enter into compensation agreements with all farmers and/or landowners who may suffer damages of any kind as a result of Imperial's operations, pipelines or abandoned pipelines, including but not limited to losses in productivity or revenue, as determined through Imperial's agricultural assessment. Such compensation agreements shall provide for compensation covering at least 5 years of losses and shall provide a mechanism for claiming compensation thereafter should losses continue past the 5-year period. Compensation for losses in productivity shall be based on market values for applicable commodities.

16. Imperial shall provide reasonable notice in writing of road narrowings or closures that could impede farm equipment moving through the area to farmers and landowners who may be impacted, as determined through Imperial's agricultural assessment.

VII. Permits and Agreements with Respect to Region-Owned Lands

62. In response to Halton Interrogatory No. 2,¹⁰³ Imperial provided an Updated Land Line List (Table 6-1)¹⁰⁴, which provided unredacted information for parcels that Imperial has identified as Region-owned. The Region has reviewed property reports for all parcels for which Imperial has identified the Region as the owner. The Region's review of impacted parcels is reliant on the assumption that Imperial has accurately identified all impacted Region-owned parcels. In addition, Imperial's Response to Interrogatories indicates that, as the pipeline route is finalized, the list of properties affected by the project may change.¹⁰⁵ These submissions are made based on the information provided by Imperial to date; if, at a later date, the Region becomes aware that additional Region-owned lands are impacted, the Region reserves the right to raise concerns with the land use and/or dispute the necessity of Imperial's utilization of the lands.

63. The Updated Land Line List remains vague as to which types of land use agreements Imperial is seeking for which Region-owned lands. In the column titled "Agreement Type", in each case it states, "Refer to table 3-1". Table 3-1, however, simply provides a general list of permits and

¹⁰³ Response to Interrogatories, *supra* note 6 at 128.

¹⁰⁴ *Ibid* at Appendix 17.

¹⁰⁵ *Ibid*, s 66.4a.

agreements Imperial requires from each authority having jurisdiction. Through subsequent correspondence with the Region, Imperial has now clarified the permits and agreements it is seeking for impacted Region-owned lands. Imperial has identified 14 parcels of Region-owned lands that would be impacted by the proposed pipeline project. Of the parcels identified, 13 are Regional road parcels in relation to which Imperial is seeking Municipal Consents in order to permit the proposed pipeline to be installed under Regional roads. In some cases, Imperial is also seeking temporary workspace on these road parcels via either a License or Temporary Workspace Agreement. The Region requires a License in such instances.

64. The remaining parcel of Region-owned land that Imperial has identified as impacted by the proposed pipeline project is a non-road parcel identified as PIN 24928-0010, which encompasses part of Johnson's Way, a road leading from Regional Road 25 to the Region's Biosolids Management Centre, as well as viable agricultural land that is leased by the Region to a tenant who farms the land. Imperial has advised that the proposed new pipeline would be installed within Imperial's existing easement that traverses this parcel and pass underneath Johnson's Way. Imperial will require temporary workspace adjacent to the existing easement. As stated, a License will be required in order to provide Imperial with temporary workspace on these Region-owned lands. Additionally, as with other agricultural lands that would be impacted by the proposed pipeline, the Region is seeking assurance that Imperial will enter into an appropriate Compensation Agreement with the tenant farming these lands and provide notice to the tenant where Imperial intends to restrict or close any roads which may be required by the tenant for the movement of farm equipment. If imposed by the Board, Conditions 15 and 16 requested by the Region will satisfy these concerns.
65. As Imperial has advised that it does not require new easements with respect to any Regional lands, nor access across Regional lands in order to access pipeline construction sites, to date, the Region has not entered into negotiations with Imperial with respect to Imperial's Easement Agreement or Construction Access Agreement¹⁰⁶ that Imperial has put before the Board. Should Imperial advise at a later date that easements, parcel crossings to access construction sites or any other form of land rights not yet identified are required with respect to Region-

¹⁰⁶ Argument-in-Chief, *supra* note 7 at Appendix B.

owned lands, the Region reserves the right to negotiate the terms of such agreements. Additionally, as stated, the Region requires a License where a proponent seeks temporary use of Regional lands, and thus views the Temporary Workspace Lease Agreement¹⁰⁷ included in Imperial's materials as inapplicable to the Region.

66. In all cases, the Region seeks assurance that Imperial will pay fair market value for use of the Region's lands.

67. In light of the above, the Region requests that, should the Board grant leave to Imperial to construct the proposed pipeline, it make such order subject to the following condition:

17. Where Imperial requires use of Halton Region-owned lands for any purpose, it shall first enter into appropriate agreements or apply for and be granted appropriate permits for such use. The terms of any land use agreement between Halton Region and Imperial shall include payment by Imperial of fair market value for use of the lands.

VIII. Conclusion

68. Should the Board grant the approvals requested by Imperial, then it is submitted that in addition to the Draft OEB Conditions, these approvals should be subject to the conditions requested by the Region, and as set out at Appendix "A" hereto.

All of which is respectfully submitted,

Meredith Baker

Assistant Corporate Counsel
Legal Services
Halton Region

¹⁰⁷ *Ibid.*

Appendix "A"

Conditions Requested

1. At least 30 days prior to commencing construction, Imperial shall provide Halton Region with an updated Emergency Response Plan that includes the following details:
 - a) Timing and method of notifying local agencies and affected parties of an incident, including direction that all non-911 notifications, which include notifications of any incidents that take place outside of Imperial's own facilities, are to be directed to haltoncemc@halton.ca and 311/Access Halton;
 - b) How information will be shared with the public during incident response, including detailed steps that Imperial will take in order to disseminate information to the public in the event of an incident; and
 - c) Identification of which emergency response responsibilities normally assumed by Halton Region or other emergency service providers, including evacuations, evacuation centres, the activation of non-governmental response units and emergency public health services and all other services set out in Halton Region's Emergency Program and Plan, would be assumed by Imperial and which responsibilities Halton Region would be expected to provide in responding to an incident.
2. Imperial shall file with the OEB and deliver to all intervenors the final risk assessment for the pipeline project upon final submission to the Technical Standards and Safety Authority.
3. Imperial shall maintain, at its sole expense, property insurance and liability insurance (including coverage for environmental damage from spills or other incidents) in amounts that are reasonable and customary for companies of comparable size and activity, covering Imperial's construction, operation, and decommissioning of the proposed pipeline and the decommissioning of the existing pipeline, including any activities ancillary thereto, (the "**Imperial Insurance**") and naming The Regional Municipality of Halton as an additional insured.
4. Imperial shall provide Halton Region with certificates of insurance in respect of the Imperial Insurance recording The Regional Municipality of Halton as an additional insured prior to commencing construction. Thereafter, Imperial shall provide Halton Region with evidence of renewals of the Imperial Insurance on an annual basis in a certificate of insurance form reasonably acceptable to Halton Region.
5. Imperial shall be liable for any premiums or deductibles relating to policies under the Imperial Insurance.
6. The policies under the Imperial Insurance shall provide:
 - a) that they are primary insurance which will not call into contribution any other insurance available to Halton Region except to the extent of claims arising from the negligence of Halton Region and those for whom Halton Region is responsible in law, and;

- b) that the Imperial Insurance shall not be cancelled, without the insurer providing at least thirty (30) business days' notice to Halton Region by registered mail.
7. Imperial shall save, defend and keep harmless and fully indemnify Halton Region from any and all claims, actions, causes of action, complaints, demands, orders, suits or proceedings of any nature or kind, and all loss, liability, judgments, costs, charges, damages, liens and expenses (including, without limitation, all legal and other professional fees and disbursements, interest, liquidated damages and amounts paid in settlement, whether from a third person or otherwise) which Halton Region may sustain, incur, or be put to by reason or arising out of or in consequence of:
- a) the construction of the proposed pipeline, including any activities ancillary thereto;
 - b) the operation of the proposed pipeline, including any activities ancillary thereto;
 - c) the decommissioning of the existing pipeline, including any activities ancillary thereto;
 - d) the exercise by Imperial of any right or obligation under the Decision and Order in EB-2019-0007 (the "**Board's Decision and Order**"), or;
 - e) any breach by Imperial of the Board's Decision and Order.

Imperial's indemnity set out in this section expressly extends to all acts and omissions of Imperial's employees, officers, contractors, and agents.

8. The pipeline project shall not preclude the construction, maintenance or operation of Halton Region's existing or planned infrastructure, as identified in Halton Region's Transportation Master Plan and Sustainable Halton Water and Wastewater Master Plan, and Imperial shall address and mitigate any issues or conflicts between the pipeline project and the construction, maintenance or operation of Halton Region's existing or planned infrastructure in consultation with and to the reasonable satisfaction of Halton Region, having regard to acceptable municipal standards, prior to commencing construction within Halton Region. Halton Region shall have the right to perform any work with respect to Halton Region's existing and planned infrastructure that is required in order to address and/or mitigate any such issues or conflicts. Any such work will be performed at Imperial's sole expense.
9. Imperial shall design and construct the pipeline to accommodate future road widenings, as identified in Halton Region's Transportation Master Plan, and such that the Region will be able to undertake construction activities for road widenings and other infrastructure, including storing heavy equipment, up to 5 metres beyond either side of the future road rights-of-way identified in Halton Region's Transportation Master Plan.
10. Imperial shall continue to discuss the project collaboratively with Halton Region and will provide proposed engineering and construction drawings for review by Halton Region as soon as they are available, but in no case less than 90 days prior to the commencement of construction activities relating to the applicable portion of the pipeline.

11. In consideration of Policy No. L-2-S(b) of the Source Protection Plans for the Halton Region Source Protection Area and the Hamilton Region Source Protection Area, Imperial shall include in its plans and install mainline valves at either side of creek crossings within Halton Region's vulnerable areas or provide a technical rationale for why additional mainline valves are not feasible in these locations to the reasonable satisfaction of Halton Region.
12. In order to ensure there is no long-term adverse impact on quality and quantity of groundwater-based supplies (supplies include private groundwater wells, groundwater-based springs/seeps, and groundwater fed ponds), Imperial shall:
 - a) Prior to construction, give notice to and seek permission from landowners to undertake surveying, and conduct baseline monitoring and testing of all accessible private groundwater-based supplies within the Zone of Influence (ZOI) of the proposed construction. All monitoring and testing shall be in accordance with the applicable guidelines and regulations.
 - b) Ensure representative monitoring of affected groundwater zones, and adequate frequency of monitoring pre, during and post construction to assess impacts (if any) of construction on the groundwater based supplies.
 - c) Reassess ZOI based on the monitoring data collected during construction and adjust monitoring activities as required. The post-construction monitoring shall be of sufficient duration to establish return to natural conditions at each monitored location.
 - d) Develop locally-applicable, measurable and implementable approaches to mitigation of impacts to private water supplies in Halton Region. Ensure any investigations in response to residents' complaints and any required implementation of mitigation and contingency measures are prompt and at no cost to residents.
 - e) The results of the baseline survey, monitoring and testing and the proposed mitigation measures shall be in a report form. The report shall be submitted to the OEB and Halton Region at least 75 days prior to planned commencement of construction within Halton Region and Halton Region shall have the right to have the report peer reviewed at Halton Region's expense and to submit such peer review to the OEB and Imperial within 45 days of receipt of Imperial's report. Based on the findings and/or recommendations of the peer review, the OEB may direct Imperial to revise its report for resubmission to the OEB and Halton Region prior to commencement of construction.
 - f) Advise Halton Region of any resident complaint and/or adverse impact of the pipeline project on quality or quantity of groundwater-based supplies as soon as Imperial becomes aware of any such complaint or adverse impact.
 - g) Make all information gathered with respect to groundwater-based supplies available to the OEB and Halton Region upon request pre, during and post-construction. Imperial shall also prepare a Halton Region-specific report (or Halton Region-specific portion of a report)

containing all information with respect to groundwater-based supplies gathered pre, during and post-construction in Halton Region and submit it to the OEB and Halton Region within 90 days of completing construction of the pipeline.

13. In consideration of Policy 2.1 of the PPS, Sections 118,139.3.7, 147(6)b) and all other applicable policies of the Halton Region Official Plan, and the Halton Region Tree By-law (By-law No. 121-05), at least 75 days prior to planned commencement of construction or vegetation clearing within Halton Region, Imperial shall submit to the OEB and Halton Region:

- a) an Environmental Protection Plan that details impact avoidance and mitigation measures required to address the protection and enhancement of the *natural features* of the Regional Natural Heritage System and the Greenbelt Natural Heritage System overlay and/or their *ecological functions* as well as *trees*, *treescapes* (each preceding italicized term as defined in the ROP) and *woodlands* (as defined in the ROP and the Tree By-law) and is inclusive of and informed by:
 - i. maps of portions of the project corridor that are designated Regional Natural Heritage System and/or subject to the Greenbelt Natural Heritage System overlay and descriptions of ROP policies applicable thereto;
 - ii. maps of *woodlands* within the project corridor and descriptions of Tree By-law provisions applicable thereto;
 - iii. maps of all components of the Regional Natural Heritage System, as outlined in Section 115.3 of the ROP, including unmapped *Key Features* not shown on Map 1G of the ROP, that are within the project corridor and descriptions of ROP policies applicable thereto; and
 - iv. descriptions of ROP policies applicable to *trees* and *treescapes*; and
- b) a Reclamation Plan that details compensatory restoration/enhancement measures to address any residual *negative impacts* (as defined in the ROP) of the pipeline project on *natural features* of the Regional Natural Heritage System and the Greenbelt Natural Heritage System overlay and/or their *ecological functions*, and any destruction or injuring of *woodlands*, *trees* and *treescapes*.

Halton Region shall have the right to have the EPP and/or Reclamation Plan peer reviewed at Halton Region's expense and to submit such peer review to the OEB and Imperial within 45 days of receipt of Imperial's EPP and Reclamation Plan. Based on the findings and/or recommendations of the peer review, the OEB may direct Imperial to revise its EPP and/or Reclamation Plan for resubmission to the OEB and Halton Region prior to commencement of construction.

14. Imperial shall complete an Agricultural Impact Assessment (AIA) or equivalent assessment of the project's impacts on the agricultural system in Halton Region and appropriate mitigating measures to be taken by Imperial, in accordance with the OEB Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario and Policy 2.3.6.2 of the Provincial Policy Statement and in consideration of Subsection 101(2)(e) of the ROP (and the associated Halton Region Agricultural Impact Assessment (AIA) Guidelines). The agricultural assessment shall be submitted to the OEB and Halton Region at least 75 days prior to planned commencement of construction within Halton Region and Halton Region shall have the right to have the assessment peer reviewed at the Region's expense and to submit such peer review to the OEB and Imperial within 45 days of receipt of Imperial's report. Based on the findings and/or recommendations of the peer review, the OEB may direct Imperial to revise its assessment, including any mitigating measures to be implemented, for resubmission to the OEB and Halton Region prior to commencement of construction.
 - 14.1 As part of completing the agricultural assessment, Imperial shall conduct interviews with all landowners who may be impacted by the pipeline project in order to gather, at a minimum, information relating to tile drainage, on-farm water sources and on-site features, such as type and intensity of existing agricultural production and parcel size, shape and accessibility.
15. Prior to commencing construction, Imperial shall enter into compensation agreements with all farmers and/or landowners who may suffer damages of any kind as a result of Imperial's operations, pipelines or abandoned pipelines, including but not limited to losses in productivity or revenue, as determined through Imperial's agricultural assessment. Such compensation agreements shall provide for compensation covering at least 5 years of losses and shall provide a mechanism for claiming compensation thereafter should losses continue past the 5-year period. Compensation for losses in productivity shall be based on market values for applicable commodities.
16. Imperial shall provide reasonable notice in writing of road narrowings or closures that could impede farm equipment moving through the area to farmers and landowners who may be impacted, as determined through Imperial's agricultural assessment.
17. Where Imperial requires use of Halton Region-owned lands for any purpose, it shall first enter into appropriate agreements or apply for and be granted appropriate permits for such use. The terms of any land use agreement between Halton Region and Imperial shall include payment by Imperial of fair market value for use of the lands.