



Ontario
Energy
Board

Commission
de l'énergie
de l'Ontario

DECISION AND ORDER

EB-2021-0096

IMPERIAL OIL LIMITED

Waterdown to Finch Project-Expropriation Application

BEFORE: **Emad Elsayed**
 Presiding Commissioner

Robert Dodds
Commissioner

Michael Janigan
Commissioner

June 3, 2021

Revised August 13, 2021

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1 OVERVIEW

On February 23, 2021, Imperial Oil Limited (Imperial Oil) applied to the Ontario Energy Board (OEB) under section 99 of the *Ontario Energy Board Act, 1998* (OEB Act) for an order granting approval to expropriate interests in certain lands along a Waterdown to Finch Project pipeline route in the City of Mississauga and the City of Toronto¹. The following two properties are the subject to the application:

- A property owned by 2394561 Ontario Inc. located in Etobicoke, City of Toronto. Imperial Oil seeks approval for temporary workspace and permanent easements for this property.
- A property owned by 1112308 Ontario Inc. located in Etobicoke, City of Toronto. Imperial Oil seeks approval for temporary workspace and permanent easements for this property.

The properties that are subject to the application are located at the northeast part of the pipeline route². Construction in this area is planned for the summer of 2021³. Imperial Oil estimates that the construction affecting the two properties will last five non-consecutive months⁴.

Imperial Oil seeks the authority to expropriate two types of interests in each of the affected lands⁵:

- Permanent Easements - required for construction and ongoing operation and maintenance of the Waterdown to Finch Project.
- Temporary Workspace Easements— located adjacent to the new and existing easements and will be used to store material, string and weld segments of pipe and as workspace to install the pipeline, and for access during construction of

¹ The application originally asked for authority to expropriate interests in four properties. Imperial Oil reached agreements with the landowners of two of the four properties and withdrew the Application with respect to those two properties on April 19, 2021.

² Imperial Oil's response to OEB staff interrogatory no. 2 a) Figure 1, map of the project route shows kilometer posts (KP) and location of the properties subject to this application.

³ Imperial Oil response to OEB staff interrogatory no. 5. Construction started at the southwest end of the OEB-approved Route in the City of Hamilton at Waterdown Station at zero to 11th kilometer segment. The properties that are subject to this application are located at the northeast part of the route between KP 45 and KP 50 (45th and 50th kilometer) in the City of Toronto.

⁴ Imperial Oil response to OEB staff interrogatory no. 5 a)

⁵ Imperial Oil Application (EB-2021-0096) paragraph 19, pages 4 and 5

the Waterdown to Finch Project. The term of the Temporary Workspace Easements is five years.

The OEB finds that the requested expropriation is in the public interest and grants to Imperial Oil the authority to expropriate the interests in land described in Schedule A of this Decision and Order.

2 BACKGROUND

Under a separate Decision and Order dated March 12, 2020⁶, Imperial Oil received OEB's approval to construct the Waterdown to Finch Project pursuant to section 90 of the OEB Act (Leave to Construct Decision). The Leave to Construct Decision found that the Waterdown to Finch Project is in the public interest.

The Waterdown to Finch Project consists of approximately 63 kilometers of pipeline and associated facilities to transport refined fuel products from Imperial Oil's facility in the City of Hamilton to its facility at Finch Avenue in the City of Toronto. In the Leave to Construct Decision, the OEB approved, among other things, a route for the project and on December 17, 2020, the OEB approved a modification of the route (OEB-approved Route). The properties subject to this application are located within the OEB-approved Route. The OEB-approved Route is mostly parallel and adjacent to the existing Imperial Oil pipeline, which will be decommissioned and replaced by the Waterdown to Finch Project. The existing pipeline is not located on the two properties that are the subject of the application⁷.

As part of the Leave to Construct proceeding, Imperial Oil received OEB approval, under section 97 of the OEB Act, of the forms of land easement agreements that have been or will be offered by Imperial Oil to all the directly affected landowners⁸. Imperial Oil stated that it has offered the agreements in the forms approved by the OEB to the registered landowners whose properties are the subject to this expropriation application⁹.

⁶ Decision and Order, EB-2019-0007, March 12, 2020

⁷ Imperial Oil's response to OEB staff interrogatory no. 4, May 5, 2021

⁸ Decision and Order, EB-2019-0007, March 12, 2020

⁹ Imperial Oil Application, EB-2021-0096, paragraph 15, page 4

3 THE PROCESS

The OEB issued its Notice of Hearing on March 11, 2021, and directed Imperial Oil to serve the notice, the application and relevant evidence on current registered property owners, encumbrancers and those with any interest in the lands directly affected by the expropriation application. The service was completed as directed. The City of Mississauga applied for and was granted intervenor status. None of the other impacted property owners intervened (or have otherwise participated) in the proceeding.

On April 7, 2021, the OEB issued Procedural Order No. 1, setting the procedural schedule for written interrogatories and written submissions. The interrogatory stage was completed by Imperial Oil filing responses to OEB staff interrogatories on May 5, 2021.

On April 19, 2021, Imperial Oil requested to withdraw the portions of its application to expropriate certain land rights owned by the City of Mississauga and by the Canadian Pacific Railway Company. Imperial Oil advised that it wished to withdraw these portions of the application because resolutions had been reached with the City of Mississauga and the Canadian Pacific Railway Company.

On April 21, 2021, the OEB accepted Imperial Oil's request to withdraw the specified portions of the application. On April 21, 2021, the City of Mississauga also modified its status to monitor rather than intervene in the proceeding. Given that Imperial Oil had been able to resolve some of the issues with some of the affected landowners and that there were no intervenors remaining in the proceeding, the OEB issued Procedural Order No. 2 on May 10, 2021 to advance the original procedural schedule. OEB staff filed its submission on May 13, 2021. Imperial Oil filed a reply to the OEB staff submission on May 20, 2021.

4 DECISION AND FINDINGS

Section 99 of the OEB Act

The OEB's power to grant an applicant authority to expropriate land is derived from section 99 of the OEB Act. Under this section, any person who has been granted leave by the OEB to construct certain works under section 90 (hydrocarbon pipelines) or section 92 (electricity transmission lines) of the OEB Act may apply for authority to expropriate land for such works.

Subsection 99(5) of the OEB Act establishes the test for approving an application brought under subsection 99(1) and states that, if the OEB is of the opinion that the expropriation of the land is in the public interest, it may make an order authorizing the applicant to expropriate the land.

Compensation issues do not fall within the OEB's jurisdiction under the OEB Act and are addressed in accordance with the *Expropriations Act, R.S.O. 1990. C. E 26* (Expropriations Act) and, if required, are resolved by the Board of Negotiations¹⁰. If the OEB grants authority to expropriate land, absent a settlement with the property owners, Imperial Oil would follow the process set out in the Expropriations Act to determine the amount of compensation to be paid.

Public Interest Considerations

It should be noted that the OEB has already found that the Waterdown to Finch Project itself is in the public interest in the Leave to Construct Decision. The issue in this proceeding, therefore, is not whether the project as a whole is in the public interest, but rather whether the specific expropriations requested in the application are in the public interest. The OEB is not revisiting the issues that were already determined in the Leave to Construct Decision.

In assessing whether the proposed expropriations are in the public interest, the OEB considered the following issues¹¹:

¹⁰ The Board of Negotiations is an informal tribunal that mediates settlements for compensation when property is expropriated. The Board of Negotiation is part of Environment and Land Tribunals Ontario (ELTO).

¹¹ The OEB considered similar issues, in a recent proceeding (EB-2019-0127) related to NextBridge Infrastructure LP's application for authority to expropriate certain interests in land required to construct the East West Tie Project.

1. Are the specific interests in the lands requested for expropriation appropriate and has Imperial Oil taken reasonable steps to minimize the impact of the proposed expropriation on the subject properties?
2. What conditions, if any, should be attached to the OEB's Order?

4.1 Are the specific interests in the lands requested for expropriation appropriate and has Imperial Oil taken reasonable steps to minimize the impact of the proposed expropriation on the subject properties?

The Permanent Easements and Temporary Workspace Easements subject to the application are located within the OEB-approved Route¹².

The width of the requested new permanent easements is 3 metres¹³. Imperial Oil determined the dimensions of permanent easements based on the requirements for safe access to maintain and inspect the pipeline during the pipeline operation. Imperial Oil stated that the dimensions of the Temporary Workspace Easements were determined based on the construction methodology and the minimum space required for safe equipment operation during construction.¹⁴ Imperial Oil indicated that the width of the Temporary Workspace Easement is typically 10 metres, depending on the location¹⁵. The dimensions of Temporary Workspace Easements, subject to the application, are presented in the Plans of Survey Certificates of Registration that Imperial Oil filed with the application¹⁶.

Imperial Oil requested a five-year term for the Temporary Workspace Easements and explained that the five-year term is appropriate for conducting post-construction seasonal land restoration activities and monitoring reporting required by the OEB in the Leave to Construct Decision.

Imperial Oil identified the steps it has taken and is committed to take to minimize the impacts of the expropriations on the two affected properties¹⁷.

¹² Imperial Oil's response to OEB staff interrogatories, May 5, 2021, Figure 2: Subject Lands and Project Workspace Requirements

¹³ Imperial Oil's Reply Submission, May 20, 2021, page 7, paragraph 25 a)

¹⁴ Imperial Oil's response to OEB staff interrogatory no. 3 d), May 5, 2021

¹⁵ Imperial Oil's Application, page 5, paragraph 19 b)

¹⁶ Imperial Oil's Application, Appendix D-2, Appendix D-3

¹⁷ Imperial Oil's response to OEB staff interrogatory no. 3, May 5, 2021

Imperial Oil has been directly negotiating with the affected landowners and tenants since February 2019¹⁸. The communications and discussions with the representatives of landowners and tenants involved Imperial Oil's land agent, right-of-way and claims negotiator and Imperial Oil's construction teams.

The record of the communications¹⁹ indicate that the following concerns were being addressed with the mitigation measures: route alignment and future development, compensation for easements and damages and appraisals²⁰, impacts on tenant operations, duration of construction and safety in relation to risk of operating the pipeline. Imperial Oil provided a description of mitigation plans for each of the concerns raised by the landowners and tenants. Imperial Oil further stated that the permanent easements will be accessed for visual inspection and monitoring in accordance with Imperial Oil's maintenance program.

Imperial Oil indicated that its access after the pipeline construction and during operation and maintenance of the pipeline would be limited and along the permanent easements. Imperial Oil agreed with the conditions of approval proposed by OEB staff including the condition that the landowners and tenants be provided with oral and written notice a minimum of 48 hours prior to entry onto the land where Temporary Workspace Easements and Permanent Easements are located ²¹.

In its Reply Submission Imperial Oil confirmed its commitment to take reasonable and appropriate steps to minimize the impact of the proposed expropriation on the properties, the landowners, and the tenants ²².

None of the impacted property owners intervened or otherwise participated in the proceeding.

Findings

The OEB finds that the requested permanent and temporary easement area dimensions and locations are appropriate in the circumstances. The OEB finds that Imperial Oil has determined the size of the requested easements following the applicable standards and

¹⁸ Imperial Oil's response to OEB staff interrogatory no. 7, May 5, 2021, Appendix 1: Updated Record of Communication

¹⁹ Imperial Oil's response to OEB staff interrogatory no. 1, May 5, 2021, Table OEB-1: Landowner and Tenant Concerns and Responding Mitigation Measures

²⁰ Compensation matters are not within the scope of the OEB's authority under section 99 of the OEB Act.

²¹ OEB Staff Submission, Appendix A, Condition No. 2

²² Imperial Oil's Reply Submission, May 20, 2021, paragraph 36, page 10

guidance in order to reduce the impact on the affected properties. The OEB also finds that the proposed five-year term of the Temporary Workspace Easements is appropriate as it allows for a sufficient time to use the required area during construction as well as for post-construction restoration activities and for Imperial Oil's monitoring of the results of land restoration and mitigation of impacts. Neither of the directly impacted landowners intervened in this proceeding or otherwise made submissions to the OEB regarding the appropriateness of the proposed expropriations.

The OEB notes that Imperial Oil has committed to implement mitigation strategies outlined in the Project's Environmental Assessment Report to minimize environmental impacts on the affected properties. The OEB also expects that Imperial Oil will adhere to its commitment to address the landowners' concerns and minimize impacts of the expropriation on the properties, the landowners and tenants.

4.2 What conditions, if any, should be attached to the OEB's Order?

In the interrogatory process, OEB staff presented seven draft conditions of approval²³ to Imperial Oil for comment. Imperial Oil reviewed the draft conditions and supported the conditions²⁴.

Findings

The OEB approves the wording of the draft conditions in the OEB staff submission and orders that these conditions be adhered to by Imperial Oil. These conditions should serve to further mitigate any impacts from the expropriations on the affected landowners. The OEB's conditions of approval are attached in Schedule B to this Decision and Order.

²³ The proposed conditions are largely the same as the conditions that the OEB attached to its approval of NextBridge's expropriation application related to the East West Tie Project (EB-2019-0127).

²⁴ Imperial Oil response to OEB staff interrogatory no. 6 and Imperial Oil's Reply Submission, May 20, 2021

5 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Imperial Oil is hereby authorized to expropriate the interests sought in the lands listed in Schedule A to this Decision and Order.
2. Imperial Oil shall file, with the OEB, a final expropriation plan for OEB approval and endorsement as soon as practical.
3. The authorization granted to Imperial Oil is subject to conditions attached in Schedule B to this Decision and Order.
4. Imperial Oil shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

DATED at Toronto June 3, 2021

ONTARIO ENERGY BOARD

Original Signed By

Christine E. Long
Registrar

SCHEDULE A
DECISION AND ORDER
IMPERIAL OIL LIMITED

EB-2021-0096

JUNE 3, 2021

REVISED AUGUST 13, 2021

Description of lands and interest

DESCRIPTION OF RIGHTS SOUGHT – NEW PERMANENT EASEMENTS

In respect of the lands and premises legally described in Appendices D-2 and D-3 (the “**Lands**”), the rights sought for the new permanent easements are:

- a) the exclusive right, licence, liberty, privilege, easement and right-of-way on, over, upon, across, along, in, under and through the Lands (“**Easement**”), together with the right, licence, privilege and easement of ingress and egress over the remainder of the Lands, to and from the Easement, to sample soil, survey lands and to lay down, construct, operate, maintain, inspect, patrol (including aerial patrol), alter, relocate, remove, replace, reconstruct and repair one or more line(s) of pipe together with all facilities, appurtenances or works of Imperial and its and its directors, officers, agents, employees, contractors, subcontractors and invitees (the “**Transferees**”) useful in connection with or incidental to the Project, including, but without limiting the generality of the foregoing, all such pipes, drips, valves, fittings, connections, meters, markers, corrosion control equipment, cathodic protection equipment and other equipment and appurtenances, whether or not similar to the foregoing, as may be useful or convenient in connection therewith or incidental thereto for the carriage, transmission, conveyance, transportation and handling of oil, diluent, refined products, natural and artificial gas and other gaseous or liquid hydrocarbons and any product or by-product thereof;
- b) the full and free right, licence, liberty, privilege and easement of ingress and egress at any and all times over, along, across and upon the Easement;
- c) the right at any time and from time to time to remove any boulder or rock and to sever, fell, remove or control the growth of any roots, trees, stumps, brush or other vegetation in, on, above, or under the Lands;
- d) the right for the Transferees to exercise such rights as described above on foot and/or with vehicles, together with materials, machinery and equipment for all purposes useful or convenient in connection with or incidental to the exercise and enjoyment of the rights described above; and
- e) the owner of the Lands shall not excavate, construct, drill, install, erect or permit to be excavated, constructed, drilled, installed or erected on, over or under any part of the Easement any pipe, pit, well, foundation, building or other structure, installation or improvement, or do or permit to be done any mining, quarrying, land levelling, landscaping or other work or activity of any like or similar nature on, in or under the Easement; alter the grade of the Easement; add any paving or other material to the Easement; use the Easement for any other purpose which could compromise the integrity of the Pipeline; or

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- f) take any action which restricts or limits the exercise by the Transferees of any of the rights described above.

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DESCRIPTION OF RIGHTS SOUGHT – TEMPORARY EASEMENTS

In respect of the lands and premises legally described in Appendices D-2 and D-3 (the “**Lands**”), the rights sought for the temporary easements are:

- a) the rights to be held by Imperial as grantee for the term of five (5) years (the “**Term**”) for the purpose of providing a temporary easement to Imperial, its employees, agents and contractors, with respect to the Project, including the right to enter and use the Lands with vehicles, materials, machinery, supplies and equipment, together with the right of ingress and egress over the remainder of the Lands to and from the Lands, and to sample soil, survey lands and to lay down, construct, maintain, inspect, alter, remove, replace, reconstruct and repair one or more line(s) of pipe within an easement, together with the right at any time and from time to time during the Term to remove any boulder or rock and to sever, fell, remove or control the growth of any roots, trees, stumps, brush or other vegetation in, on, above, or under the Lands, and the right to remove buildings or other improvements from the Lands and to install temporary gates and fences and stockpiling of construction spoil, materials and equipment as required by Imperial. During the Term, the landowner shall not use the Lands for any purpose that would interfere with or detrimentally affect Imperial’s use of the Lands;
- b) the right to peaceably possess and enjoy the Lands and the rights described herein without any interruption or disturbance from or by the landowner or any other persons claiming by, through or under the landowner; and
- c) the right to remove or cause to be removed from the Lands all buildings, structures, fixtures, casing in wells, pipelines, material and equipment of whatsoever nature or kind, which Imperial may have placed on or in the Lands or on or in any area to be surrendered.

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APPENDIX D-2

Owner of the Parcel

Identifier	WTFN4076
Name	2394561 ONTARIO INC.
Address	246 Attwell Drive Etobicoke, ON M9W 5B4
Nature of the Property Interest	Registered Owner
Legal Description of Parcel	PT LT 20 CON 3 FTH ETOBICOKE AS IN TB875256; S/T EB324828; TORONTO (ETOBICOKE) ; CITY OF TORONTO
Nature of the Right Sought	Temporary Easement for a term of 5 years Permanent Easement
Legal Description of Interest to be Expropriated	<p>Temporary Easement: Part of PT LT 20 CON 3 FTH ETOBICOKE AS IN TB875256; S/T EB324828; TORONTO (ETOBICOKE) ; CITY OF TORONTO designated as Parts 1 & 2 Plan 66R- [REDACTED] being part of PIN 07424-0121 (LT), as depicted by Parts 1, 2, 5 and 6 on the draft expropriation plan dated [REDACTED], attached.</p> <p>Permanent Easement: Part of PT LT 20 CON 3 FTH ETOBICOKE AS IN TB875256; S/T EB324828; TORONTO (ETOBICOKE) ; CITY OF TORONTO designated as Parts 3 and 4 Plan 66R- [REDACTED] being part of PIN 07424-0121 (LT), as depicted by Parts 3 on the draft expropriation plan dated [REDACTED], attached.</p>

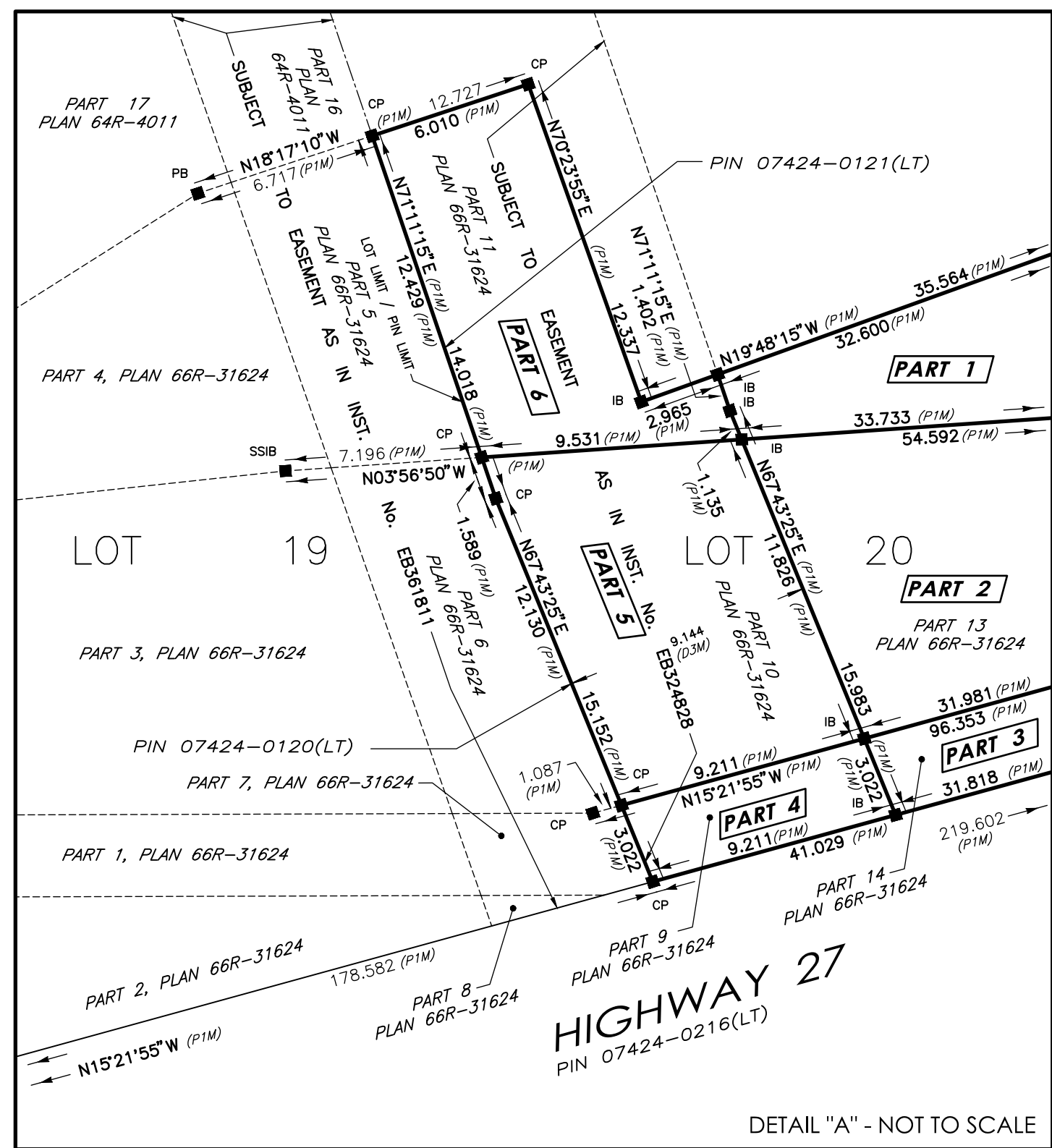
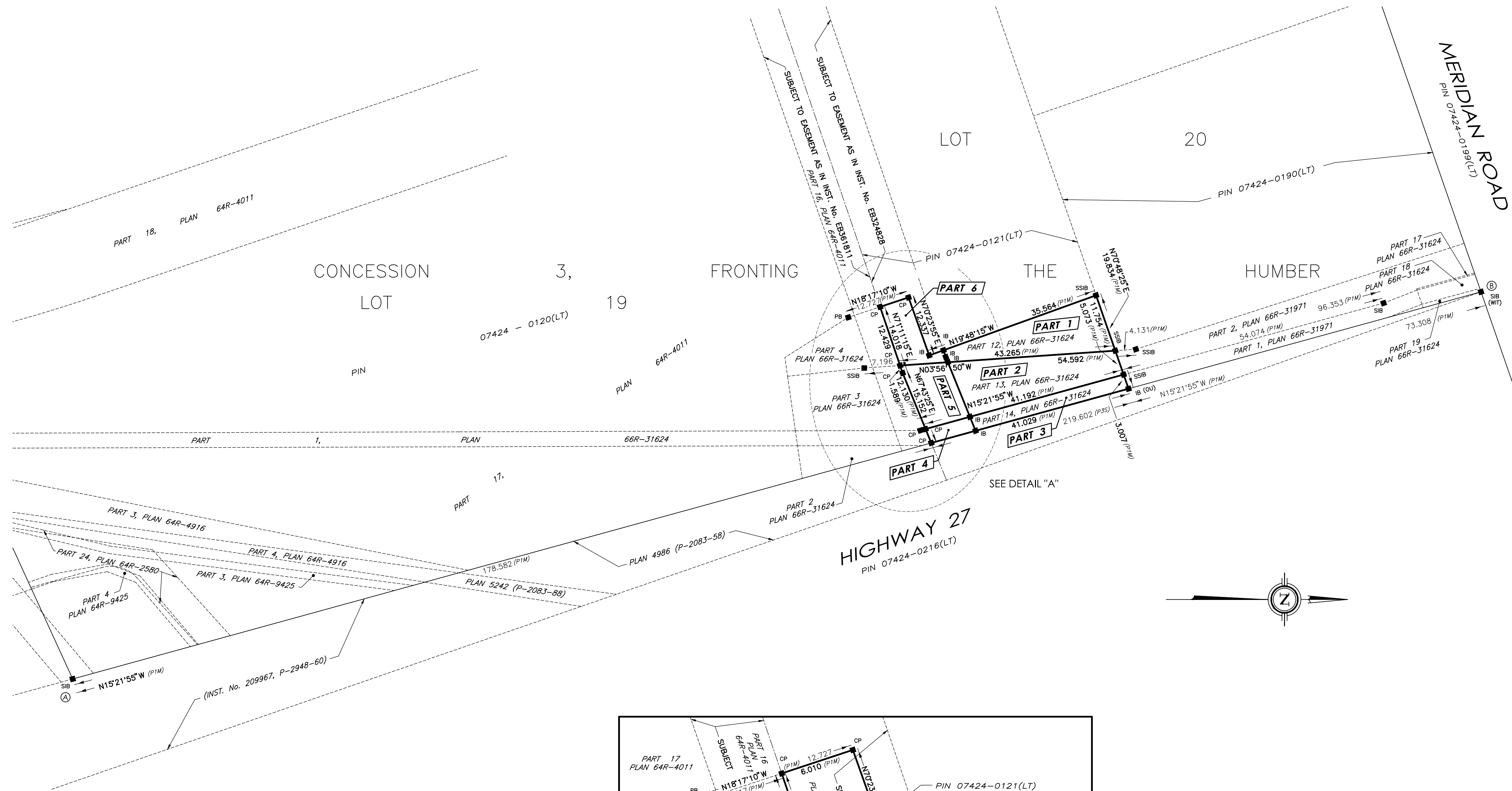
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Interested Persons

Person 1	
Name	THE CORPORATION OF THE BOROUGH OF ETOBICOKE
Address	MCMASTER, MONTGOMERY & CO 133 RICHMOND ST. WEST TORONTO 1, ONTARIO M5H 2L3
Alternate Address	CITY OF TORONTO 55 JOHN STEET METRO HALL 26TH FLOOR TORONTO, ONTARIO M5V 3C6
Nature of the Property Interest	EB463521; AGREEMENT EB281418; AGREEMENT EB324828; TRANSFER EASEMENT
Person 2	
Name	DANTE A. SARACINI and ALBERT SARACINI, carrying on business in partnership as SARACINI CONSTRUCTION COMPANY
Address	WILLIS, DINGWALL AND NEWELL BARRISTERS & SOLICITORS SUITE 1400 4 KING STREET WEST TORONTO 1, ONTARIO
Nature of the Property Interest	EB280968Z; REST COV APL ANNEX
Person 3	
Name	THE TORONTO-DOMINION BANK
Address	2038 KIPLING AVENUE REXDALE, ONTARIO M9W 4K1
Nature of the Property Interest	AT3633663; CHARGE AT3633664; NO ASSGN RENT GEN

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 Stantec		Stantec Geomatics Ltd CANADA LANDS SURVEYORS ONTARIO LAND SURVEYORS 171 QUEENS AVENUE, SUITE 600 LONDON, ONTARIO, N6A 5J7 TEL. 519.645.2007 stantec.com	
DRAWN: JB/DL	CHECKED: JM	DATE: JUNE 17 2021	PROJECT NO.: 156660015

APPENDIX D-3

Owner of the Parcel

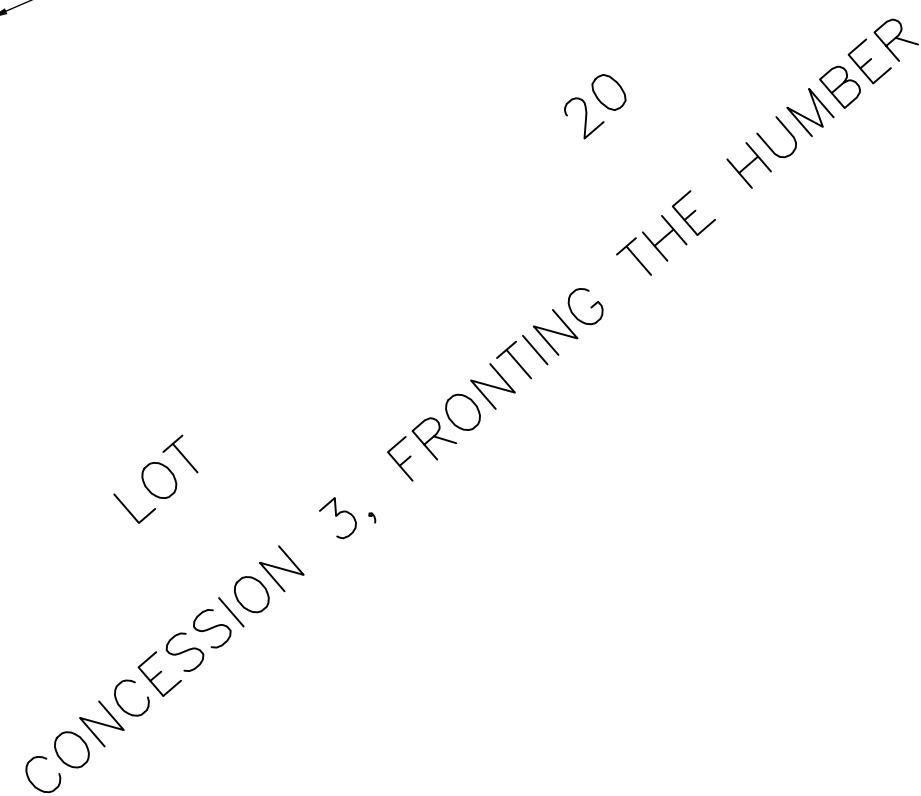
Identifier	WTFN4077
Name	1112308 ONTARIO INC.
Address	246 Attwell Drive Etobicoke, ON M9W 5B4
Nature of the Property Interest	Registered Owner
Legal Description of Parcel	PT LT 20 CON 3 FTH ETOBICOKE AS IN CA339394; TORONTO (ETOBICOKE)
Nature of the Right Sought	Temporary Easement for a term of 5 years Permanent Easement
Legal Description of Interest to be Expropriated	<p>Temporary Easement: Part of PT LT 20 CON 3 FTH ETOBICOKE AS IN CA339394; TORONTO (ETOBICOKE) designated as Part 2 Plan 66R- [REDACTED] being part of PIN 07424-0190 (LT), as depicted by Parts 2 on the draft expropriation plan dated [REDACTED], attached.</p> <p>Permanent Easement: Part of PT LT 20 CON 3 FTH ETOBICOKE AS IN CA339394; TORONTO (ETOBICOKE) designated as Parts 1 Plan 66R- [REDACTED] being part of PIN 07424-0190 (LT), as depicted by Parts 1 on the draft expropriation plan dated [REDACTED], attached.</p>

Interested Persons

Person 1	
Name	THE TORONTO-DOMINION BANK
Address	2038 KIPLING AVENUE REXDALE, ONTARIO M9W 4K1
Nature of the Property Interest	AT3633716; CHARGE AT3633717; NO ASSGN RENT GEN

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DRAWN: DL	CHECKED: JM	DATE: JUNE 9 2021	PROJECT No.: 156660015
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SCHEDULE B
DECISION AND ORDER
IMPERIAL OIL LIMITED
EB-2021-0096
JUNE 3, 2021

**Imperial Oil Limited, Expropriation Application
Waterdown to Finch Project
Section 99 Order Granting Authority to
Expropriate Interests in Certain Lands**

CONDITIONS OF APPROVAL

1. Imperial Oil shall notify the OEB in writing in the event that, after this Decision and Order has been issued, a negotiated settlement is reached and expropriation is no longer necessary. This notice shall be filed with the OEB within ten days of the settlement.
2. Imperial Oil shall use all reasonable efforts to provide oral and written notice to the landowners a minimum of 48 hours prior to entry onto the land.
3. Reasonable accommodation shall be made in Imperial Oil's schedule for landowner requests/concerns to ensure that pipeline facilities' construction and associated activities do not interfere with landowner operations.
4. Imperial Oil or its agents will consult with the landowner in advance of entry as to the manner in which existing gates / fences / entryways are to be managed while entering property. In the event the landowner cannot be contacted, Imperial Oil shall ensure that gates / fences / entryways used by Imperial Oil personnel or its agents are left as found.
5. The landowners and tenants can be present to observe the pipeline facilities' construction and associated activities subject to Imperial Oil's safety policies and procedures and the Occupational Health and Safety Act.
6. Imperial Oil shall keep records of the personnel attending and entering on lands, the time in which entry occurred and the locations entered.
7. Imperial Oil shall designate one of its employees as project manager who will be responsible for the fulfillment of these conditions and shall provide the employee's name and contact information to the OEB and to the landowners and tenants as well clearly posted on the construction site. The project manager will be responsible for the fulfilment of the conditions of approval on the site.