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Submitted Electronically via: www.line5tunneleis.com

Line 5 Tunnel EIS

16501 Shady Grove Road, P.O. Box 10178

Gaithersburg, MD 20898

RE: Public Comment on Supplemental Draft Environmental Impact Statement (SDEIS)
Permit Application No. LRE-2010-00463-56-A19 Enbridge Line 5 Tunnel Project – HDD
Installation Alternative

To the U.S. Army Corps of Engineers (USACE):

We are writing to formally oppose the Enbridge Line 5 Tunnel Project and the associated “straw man” Horizontal Directional Drilling (HDD) Installation Alternative presented in the Supplemental Draft Environmental Impact Statement (SDEIS) as concerned members of the public in our personal capacities. The continued operation of Line 5 in the Straits of Mackinac poses an unacceptable risk to the Great Lakes, natural resources, and the climate. There is too much at stake for the Federal government to compromise the integrity of this critical environmental review.

Critically, this comment documents significant procedural and substantive deficiencies in the SDEIS and its process, which prevent meaningful public participation and violate the National Environmental Policy Act (NEPA) and the Administrative Procedures Act (APA).

I. Pre-determined Policy Bias Compromises EIS Integrity.

The U.S Department of War USACE’s Environmental Impact Statement (EIS) appears compromised by an approach that suggests a failure to maintain neutrality and

objectivity, potentially subjecting the environmental review to significant and needless procedural delay and legal challenge.

This pre-determination by the U.S. Department of War and other cabinet agencies is strongly evidenced by speculative and unsupported statements from the government, which clearly articulate a policy favoring the pipeline's continuation. For example, the Department of Justice attorneys stated:

“Shutting down Line 5 could disrupt the energy supply chain, increase domestic prices, and enhance the economic and political power and leverage of malign foreign actors worldwide. Such outcomes conflict with our nation’s foreign policy goals.”

This and similar statements reveal a policy mandate that functionally pre-determined the project's necessity, thereby functionally undermining the required 'hard look' mandate under NEPA.

This bias manifests in the EIS through the failure to rigorously analyze the full decommissioning and closure of Line 5 as a reasonable "No Action" alternative, defining the project's purpose too narrowly and thereby manufacturing a 'straw man' argument intended solely to justify a pre-selected outcome.

II. The Horizontal Directional Drilling (HDD) Alternative is a "STRAW MAN."

The inclusion of the Horizontal Directional Drilling (HDD) Installation Alternative appears to be a procedural tactic rather than a genuine exploration of reasonable alternatives.

By deliberately presenting an HDD option that requires an environmentally costly 4-mile clear-cut corridor, 51 acres of extensive vegetation removal, and lacks the necessary "secondary containment" for oil spills, the SDEIS creates a "straw man" designed to fail. This calculated approach artificially frames the Applicant's Preferred Alternative (the Tunnel) as the environmentally superior choice, thereby manipulating the determination of the Least Environmentally Damaging Practicable Alternative (LEDPA).

If the USACE is serious about conducting an objective analysis of alternatives, it must provide a full explanation for the following contradiction:

- The 2018 assessment deemed HDD "infeasible" due to "hard characteristics of the subsurface rock" (Executive Summary, p. 1).
- Yet, the current SDEIS now presents HDD as a feasible option, despite there being no change to the underlying geology of the Straits.

Without a justified and scientific explanation for this reversal on feasibility, the inclusion of the HDD alternative is both arbitrary and capricious, further suggesting the alternatives analysis is designed to steer the decision toward the tunnel. The USACE's lack of reference to any meaningful technical or scientific data supporting this reversal on feasibility precludes informed public engagement and renders the inclusion of the HDD alternative unsound.

III. Failure To Analyze A "Reasonable Alternative" DECOMMISSIONING (No Action) with Energy Transition.

The SDEIS is legally deficient because it fails to carry forward the only alternative that truly meets the public need for water safety and climate resilience: Decommissioning (No Action) with Energy Transition.

The USACE has violated NEPA by defining the project's purpose too narrowly. By defining the purpose as specifically "transporting light crude oil and NGLs" across the Straits, the USACE has excluded non-pipeline alternatives. This circular logic (defining the need as the pipeline itself) violates the mandate to rigorously explore objectively reasonable alternatives.

A reasonable alternative that must be analyzed, and whose exclusion risks significant procedural delay and legal vulnerability, is the decommissioning of Line 5 with energy transition. The feasibility of this alternative is supported by a robust record of expert

testimony in state proceedings:

- Expert Testimony in MPSC Case U-20763: Independent reports, such as the London Economics International (LEI) Report, determined that the energy market has the existing capacity to absorb the product flow through rail, truck, and the broader pipeline network without significant consumer price shocks.
- Dynamic Risk Assessment Systems Report (2017): This state-commissioned report concluded that decommissioning is a technically feasible alternative and would generate more jobs than the tunnel project.

The USACE must revise the EIS to include a full "Decommissioning with energy transition/No Action" alternative that accounts for this proven market adaptability.

IV. The SDEIS is Incomplete and Legally Deficient.

The current SDEIS was put out for comment in incomplete form and must be reissued for public review and comment after it has been completed with full analysis being incorporated. The existing suggestion of deferral of environmental analysis until a final decision opens the door for the government to make 'post-hoc rationalizations' to support a decision, violating the core principle established in *Citizens to Preserve Overton Park v. Volpe* (1971). The ROD is the outcome that explains and documents the decision making process that already occurred, not the place for initial analysis.

The most egregious omission is the deferral of the analysis regarding impacts to Tribes' privileges of occupancy, Tribal usufructory natural resources, and Tribal Treaty Rights, "[t]he Indians stipulate for the right of hunting on the lands ceded, with the other usual privileges of occupancy (1836 Treaty of Washington, art. 13, 7 Stat. 491)." This is especially concerning related to ENbridge's history of illegal trespass on Tribal lands (*Bad River Band v. Enbridge* (7th Circuit, 2024)). The SDEIS Executive Summary (Table ES-2) lists the impact to Treaty Rights as: "To Be Determined in the Record of Decision (ROD)."

This deferral of environmental analysis precludes meaningful public engagement, constitutes a flagrant violation of the USACE's fiduciary trust responsibility to Tribal Nations, and demonstrates a failure to meet NEPA's fundamental "hard look" requirement.

- Violation of NEPA and Trust Responsibility: The USACE cannot fulfill its duty to assess "Environmental Consequences" without first determining the impact on the supreme law of the land (the 1836 Treaty of Washington). The potential impact on Treaty-reserved fishing rights, a primary concern, is a direct environmental consequence that must be disclosed and analyzed before the public comment period closes and before any ROD. The USACE is effectively saying the public and decision-makers cannot fully review this "significant impact" until the decision is already finalized making the EIS an inadequate document for informed decision-making (*Robertson v. Method Valley Citizen's Council* (1989)).
- Violation of Administrative Procedure: Deferring this critical analysis to the Record of Decision (ROD) violates the Administrative Procedure Act (APA), as it intentionally precludes meaningful public comment and expert scrutiny on the agency's findings before the final decision is made. The public is entitled to review and comment on the agency's rationale and factual findings regarding Treaty Rights, not just its final post-hoc rationalizations.

The USACE is legally required to revise and re-publish the SDEIS with a complete and robust analysis of impacts to Treaty Rights prior to being made available to the public for comment. Failure to revise and republish the document for comment ensures a lack of significant public engagement and is highly likely to cause needless and lengthy judicial delays in the government's environmental review.

V. Contested Safety and Risk Assumptions in the SDEIS.

Through this comment we are formally contesting the following flawed safety

assumptions and biased risk modeling presented in the SDEIS:

A. Methane Safety Bias and Catastrophic Risk Modeling

The SDEIS exhibits a clear safety bias by implying the Tunnel is superior to the Horizontal Directional Drilling (HDD) alternative due to the presence of methane sensors on Tunnel Boring Machines (TBMs). This analysis is inadequate because it ignores the high-consequence risks inherent in the tunnel environment.

- Ignoring the TBM as an Ignition Source: The TBM itself, with its high-power electrical components, represents a significant potential spark source within the confined, methane-rich geologic environment of the Straits. Experts, including pipeline safety expert Richard Kuprewicz in related administrative proceedings (MPSC Case U-20763), have warned of the "potential for a release into the Straits from the tunnel by way of a catastrophic explosion" due to ignition sources and the volatile contents of the pipeline.
- Fails to Model Catastrophic Tunnel Risk: The SDEIS fails to adequately model the low-probability, high-consequence catastrophic risk of a methane explosion within the confined tunnel space. As geologist and engineer Brian O'Mara testified in the same proceedings, the off-gassing of dissolved methane into the confined tunnel atmosphere creates an acute hazard profile. The SDEIS must be revised to provide a full quantitative risk assessment (QRA) accounting for the catastrophic failure risks of both TBM operations and the completed tunnel structure.

B. Flawed Assumption of "Secondary Containment"

The SDEIS incorrectly promotes the Tunnel as providing effective "secondary containment" for the pipeline. This assumption is technologically flawed and must be corrected:

- The Tunnel is Not a Pressure Vessel: The concrete tunnel structure is not

designed as a pressure vessel capable of withstanding or reliably containing the massive volume and high pressure (up to 1,440 psi) of a worst-case discharge (WCD) of the 30-inch pipeline.

- Contradicts Engineering Reality: A catastrophic release within the tunnel, particularly of volatile Natural Gas Liquids (NGLs), could lead to structural compromise of the tunnel lining and the eventual leakage of product through joints and cracks into the surrounding groundwater and the Straits.

The USACE must produce explicit engineering proof and analysis in addition to just a statement of intent that the tunnel can fully contain a WCD scenario without failure or leakage into the surrounding environment. Without this proof, the claim of "secondary containment" must be removed as it violates the NEPA "hard look" requirement for environmental consequences.

VI. The False Emergency | Procedural Violation and Request for Comment Period Extension

The public comment period provided for this SDEIS is legally insufficient and prevents meaningful public engagement.

The USACE is attempting to justify the abbreviated 22-day comment period by invoking "emergency" procedures. This is untenable and undermines the credibility of the entire review process.

- Contradiction of Timeline: The pipeline has been operational since 1953 (72 years), and the USACE's own EIS review process has been underway since 2021. After decades of operation and years of regulatory review, there is no sudden, justifiable "emergency" that warrants circumventing the standard 45-day NEPA review period (40 CFR § 1506.10).
- Meaningless Review Period: The truncated timeline is rendered effectively meaningless due to the document's incomplete nature. The public is asked to comment on an SDEIS that:

- Defers the essential Treaty Rights analysis to the final Record of Decision.
- Omits the foundational technical data supporting the contradictory HDD feasibility claims.

The USACE cannot declare an "emergency" to excuse an incomplete document and missing data. So therefore, I formally request that the USACE take the following actions:

- Immediate Disclosure and Revision: Immediately release the specific technical data supporting the HDD feasibility claim and revise the SDEIS to include the complete analysis of impacts to Treaty Rights.
- Extension of Comment Period: Extend the public comment period to close no earlier than 45 days AFTER the revised and fully supported SDEIS is formally made publicly available. This is the minimum necessary to ensure a legally defensible, informed, and substantive public review.

VII. CONCLUSION

For the reasons stated above—procedural brevity, the "straw man" nature of the HDD alternative, the deferral of Treaty Rights analysis, and the failure to consider decommissioning—I request that the USACE withdraw the current SDEIS and re-issue a comprehensive draft that addresses these failures for a 45-day public review and comment period.

Sincerely,

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