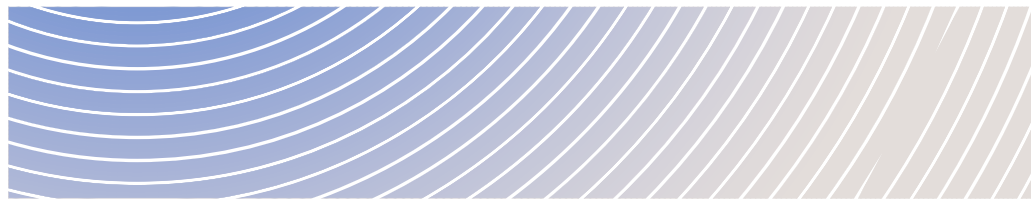


Analysis Report



WHETHER TO DESIGNATE THE **HIGHWAY 413 PROJECT** IN ONTARIO
PURSUANT TO THE *IMPACT ASSESSMENT ACT*

DECEMBER 19, 2024



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Purpose

The Impact Assessment Agency of Canada (IAAC) prepared this report in response to a request to designate the Highway 413 Project (the physical activities referred to as the Project) proposed by Ontario Ministry of Transportation (MTO, also known as the Proponent) pursuant to section 9 of the *Impact Assessment Act* (the IAA), as amended.

Context of Request

Current Designation Request

On October 21, 2024, the Minister of Environment and Climate Change (the Minister) received a request to designate the Project from Environmental Defence (the requester). The requester expressed concerns about potential adverse project-related effects within federal jurisdiction on fish and fish habitat, migratory birds, and species at risk. Other matters raised included effects to wildlife, wildlife habitat, natural heritage areas, greenhouse gas emissions and climate change, cumulative effects, air quality and health, need for the Project and consideration of transportation alternatives, urbanization, adequacy of provincial legislations and mechanisms, including the new *Highway 413 Act, 2024* and its allowance for early works, and consultation with Indigenous communities. IAAC also received correspondence in support of designation from the David Suzuki Foundation, Halton Hills Climate Action, and a joint submission signed by 120 scientists, along with members of the public.

IAAC determined that no action has been taken that would prevent the Minister from exercising their authority to designate the Project (see Authority to Designate the Project). On October 29, 2024, IAAC sent a letter to the requester to acknowledge the request to designate.

On November 1, 2024, IAAC sent a letter to the Proponent notifying them of the designation request and requesting information regarding the Project. IAAC also notified or sought input from relevant federal authorities, provincial ministries, municipalities, and eleven Indigenous communities.

IAAC focused its assessment on the potential effects of the Project within federal jurisdiction as outlined in subsection 9(1) with consideration of subsection 9(2) of the IAA and followed IAAC's Operational Guide: Designating a Project under the *Impact Assessment Act*¹.

IAAC considered input received from the Mississaugas of the Credit First Nation and Six Nations of the Grand River. Advice on potential effects of the Project, and applicable legislative frameworks was received from

¹ Operational Guide: Designating a Project under the *Impact Assessment Act*, <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/designating-project-impact-assessment-act.html>



Fisheries and Oceans Canada (DFO), Environment and Climate Change Canada (ECCC), Natural Resources Canada (NRCan), Health Canada (HC), and Transport Canada (TC).

Previous Designation Requests

On February 3, 2021, the Minister received a request from Ecojustice, on behalf of Environmental Defence, to designate the Project², which was then known as the GTA West Project. On March 3, 2021, the Minister received another designation request from the Mississaugas of the Credit First Nation³. The requesters expressed similar concerns that have been raised in the current designation request.

On May 3, 2021, the Minister designated the Project⁴, noting that the Project may cause adverse direct or incidental effects on the critical habitat of federally-listed species at risk that may not be mitigated through project design or the application of standard mitigation measures, or through existing legislative mechanisms.

At that time, the Project was undergoing an Individual Environmental Assessment pursuant to the Ontario *Environmental Assessment Act*. In July 2020, the Ontario Ministry of Environment, Conservation and Parks proposed a regulation under the Ontario *Environmental Assessment Act* for a streamlined environmental assessment process, which would have also allowed the Proponent to conduct early works prior to completion of the Individual Environmental Assessment process. The Proponent would have been required to consult with government reviewers, the public and Indigenous communities, develop an issue resolution process, and follow all other relevant legislation, standards, and practices set out in the regulation. The Analysis Report⁵ for the 2021 designation request contemplated the proposed 2020 regulation.

On October 13, 2023, the Supreme Court of Canada issued its decision on the constitutionality of the IAA. On October 24, 2023, the province of Ontario filed an application for judicial review at the Federal Court of Canada to prohibit Canada from making further decisions or taking further actions under the IAA in respect of the Project, and to declare the IAA of no force.

On April 15, 2024, the judicial review at the Federal Court of Canada was resolved by consent and the 2021 Designation Order was set aside.. The Governments of Canada and Ontario signed the *Canada–Ontario Memorandum of Understanding on the Assessment of Effects in Areas of Federal Jurisdiction of the Highway 413 Project*⁶ (the Memorandum of Understanding) and established a joint federal-provincial Working Group governed by a Terms of Reference. The Working Group includes the Proponent (MTO), the Ontario Ministry of Environment, Conservation and Parks (MECP), IAAC, DFO, and ECCC, and leverages collective expertise to protect the environment and ensure impacts to federally listed species at risk and their critical habitats are considered before the project moves into the detailed design stage. Provincial and federal officials will recommend appropriate measures to minimize environmental impacts in areas of federal environmental jurisdiction. The Memorandum of Understanding specifies that MTO, as a Crown proponent, will undertake

² <https://www.iaac-aeic.gc.ca/050/evaluations/document/138109>

³ <https://www.iaac-aeic.gc.ca/050/evaluations/proj/81381/contributions/id/54209>

⁴ <https://www.iaac-aeic.gc.ca/050/evaluations/document/138883>

⁵ <https://www.iaac-aeic.gc.ca/050/evaluations/document/138551>

⁶ <https://www.iaac-aeic.gc.ca/050/evaluations/document/157201>



consultation with Indigenous communities for the Project in accordance with the honour of the Crown and its own guidance.

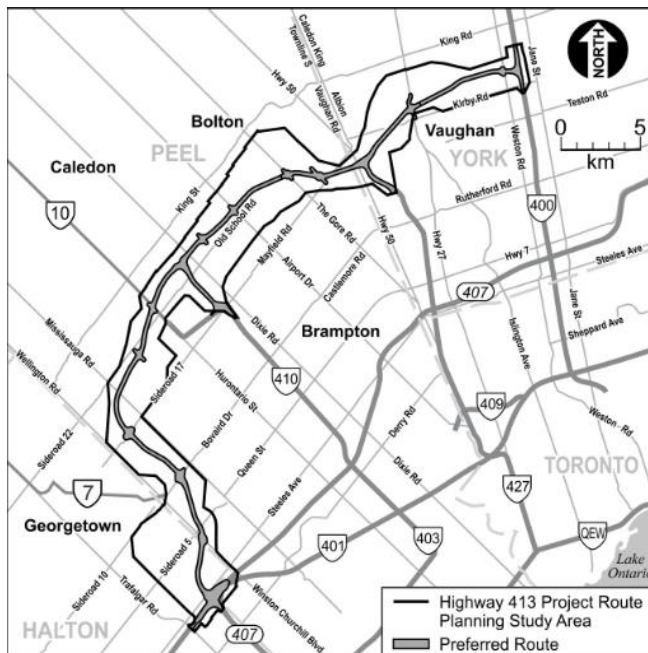
The Proponent confirmed that the Project under consideration in the current designation request is the same as the GTA West Project that was considered in the 2021 designation request.

Project Context

Project Overview

The Project includes the construction, operation and maintenance of a new 400-series highway located in the northwest Greater Toronto Area (Figure 1). The Project would be 59 kilometres of highway and transitway, which includes a 4-kilometre and a 3-kilometre extension to highway 410 and highway 427, respectively. The Project would pass through the municipalities of Vaughan, Caledon, Brampton, and Halton Hills. It would connect highway 400 (between Kirby Road and King-Vaughan Road), to the highway 401/407 interchange area.

Figure 1: Project Location for Highway 413



Source: Ontario Ministry of Transportation, 2024



Project Components and Activities

The Project would include a new highway and extensions to existing highways.

Key project components would include:

- 59 kilometres of new six-lane (110 metre) highway (of which 7 kilometres would be new extensions to connect to Highway 410 and Highway 427);
- a separate 60-metre-wide transitway built adjacent to the new highway;
- new infrastructure works associated with connecting the new highway with highway 400 and highway 401/407 interchange area;
- 95 water crossings; and,
- 11 interchanges at municipal roads and bridges.

The main construction activities associated with the Project include:

- site preparation, including vegetation clearing and site grading;
- relocation of existing utilities;
- placement of bridges, culverts, and associated drainage features; and,
- placement of granular and pavement materials.

The main activities during the operation phase would be the operation of the highway, and the maintenance of the highway and the adjacent transitway. At the time of this analysis, IAAC understands that there is no timeline for the construction of the transitway, and that the transitway will be subject to a separate provincial environmental assessment process.

Project operations are anticipated in perpetuity; decommissioning and abandonment are not anticipated.

Analysis of Designation Request

Authority to Designate the Project

The *Physical Activities Regulations* (the Regulations) of the IAA identify the physical activities that constitute designated projects. Item 51 of the Regulations states:

The construction, operation, decommissioning and abandonment of a new all-season public highway that requires a total of 75 km or more of new right of way.

The Project, as described in the information provided by the Proponent, involves the construction and maintenance of a new all-season public highway that would require a total of 59 kilometres of new right of way. As such, the Project is not described by Section 51 of the Regulations.

Under subsection 9(1) of the IAA the Minister may, by order, designate a physical activity that is not prescribed in the Regulations. The Minister may do this, if, in the Minister's opinion, the physical activity may cause adverse effects within federal jurisdiction or direct or incidental adverse effects.

In accordance with subsection 9(2) of the IAA, in making the decision on whether to designate the Project, if the Minister is of the opinion that the carrying out of the physical activity may cause adverse effects within federal jurisdiction or direct or incidental adverse effects, the Minister may consider public concerns related to the adverse effects within federal jurisdiction, adverse impacts that the physical activity may have on the rights of Indigenous peoples, and whether a means other than an impact assessment exists that would permit a jurisdiction to address the adverse effects.

The Minister cannot designate a physical activity if the carrying out of the physical activity has substantially begun, or a federal authority has exercised a power or performed a duty or function in relation to the physical activity (subsection 9(7) of the IAA). Under subsection 154(1) of the IAA, the Minister may, subject to any terms and conditions that the Minister specifies, delegate to IAAC any powers, duties, or functions that the Minister is authorized to exercise or perform under the IAA. . The Minister has delegated the powers under section 9 of the IAA, including the power to issue a designation Order, to the President of IAAC.

IAAC is of the view that the President may consider designating the Project pursuant to subsection 9(1) of the IAA as the carrying out of the Project has not substantially begun and no federal authority has exercised a power or performed a duty or function that would permit the Project to be carried out, in whole or in part.

Existing Legislative Mechanisms

Key federal and provincial legislative mechanisms and provisions that are or may be relevant to the Project are summarized below.

Federal Legislative Mechanisms

Fisheries Act

The *Fisheries Act* provides protection for fisheries and their ecosystems. Through the Fish and Fish Habitat Protection Program, DFO reviews projects for their impacts to fish and fish habitat to ensure compliance with the *Fisheries Act* and the *Species at Risk Act* (SARA). Through this program, DFO may provide a Letter of Advice to the proponent containing information to avoid and mitigate negative, project-related impacts to fish and fish habitat.

A *Fisheries Act* authorization would be required if a project is likely to result in the death of fish, and/or is likely to cause the harmful alteration, disruption, or destruction to fish habitat. Authorizations under the *Fisheries Act* may be required if the construction and maintenance activities are to occur in or near fish-bearing waterbodies. The *Fisheries Act* also prohibits the deposit of deleterious substances into waters frequented by



fish, unless authorized by the Minister of the Environment through regulations or through other federal legislation.

Consideration of the issuance of a *Fisheries Act* Authorization includes consultation with Indigenous communities. The Minister of Fisheries and Oceans must consider any adverse effects that the authorization decision may have on the rights of Indigenous peoples. DFO's consultation activities would be developed through a shared understanding with each community and determining a mutual path forward. Feedback from Indigenous communities would be incorporated into DFO's assessment of impacts, and contribute to methods used to mitigate, offset, and monitor impacts within the bounds of DFO's mandate.

If granted, a *Fisheries Act* authorization would include legally-binding conditions for avoidance, mitigation, and offsetting requirements commensurate with project impacts. Monitoring to validate impacts and verify efficacy of mitigation measures and offsetting are also part of authorization conditions.

As of November 20, 2024, DFO has not received a Request to Review form for review or application for an authorization under the *Fisheries Act* in relation to the Project.

Migratory Birds Convention Act, 1994

The *Migratory Birds Convention Act, 1994* (MBCA 1994) and its regulation, *Migratory Birds Regulations, 2022* (MBR 2022), protects migratory birds and their eggs and nests, wherever they occur, regardless of land tenure. The MBCA 1994 prohibits the disturbance or destruction of migratory bird nests and eggs, including for those species also listed under SARA. It also prohibits the deposit of harmful substances into waters or areas frequented by migratory birds or in a place from which the substance may enter such waters or such an area. Schedule 1 of the MBR 2022 provides year-round nest protection for 18 species. Nests of these species cannot be damaged, destroyed, removed or disturbed, even when they are unoccupied, unless the following conditions have been met:

- a notification of the unoccupied nest has been submitted and received through the Registry for Abandoned Nests; and,
- a designated wait time has passed, during which the nest was not occupied by a migratory bird.

A Damage or Danger permit issued under the MBR 2022 would authorize the permit holder to scare migratory birds, destroy eggs or nests, relocate birds or their nests, or kill birds in instances where the birds, nests, or eggs are causing damage to property or threaten public health and safety, or causing the permit applicant undue demonstrable hardship by preventing access to, or use of, their land. The issuance of a Damage or Danger permit would not provide a means to avoid or minimize direct or incidental effects (e.g. through the permit conditions).

ECCC requires detailed information on the potential effects of the Project before determining whether permits would be required for activities affecting migratory birds under the MBR 2022. As of November 20, 2024, ECCC has not received a request to review for a permit under the MBR 2022.

Species at Risk Act

The purposes of SARA are to prevent wildlife species in Canada from disappearing, to provide for the recovery of wildlife species that are extirpated (no longer exist in the wild in Canada), endangered, or



threatened as a result of human activity, and to manage species of special concern to prevent them from becoming endangered or threatened.

For aquatic species listed under SARA, a permit may be required for activities that may cause impacts to species that are listed as endangered or threatened, their critical habitat or residences. A SARA permit may be issued if the proponent meets stringent requirements including those to assess reasonable alternatives, and all feasible measures to minimize the impact of the proposed activity on the species or its critical habitat or the residences of its individuals. Prior to authorization, the Minister of Fisheries and Oceans must be satisfied that the activities will not jeopardize survival or recovery of the species at risk. As of November 20, 2024, DFO has not received a request for a Species at Risk Permit under SARA.

For non-aquatic species listed in Schedule 1 of SARA as extirpated, endangered, or threatened, a permit may be required for activities that may affect the listed species, any part of its critical habitat, or the residences of its individuals, where prohibitions are in place. Such permits may only be issued if: all reasonable alternatives to the activity that would reduce the impact on the species have been considered and the best solution has been adopted; all feasible measures will be taken to minimize the impact of the activity on the species or its critical habitat or the residences of its individuals; and, if the activity will not jeopardize the survival or recovery of the species.

Species that are both a migratory bird protected under the MBCA 1994, and listed on Schedule 1 of SARA as extirpated, endangered, or threatened receive protections under both pieces of legislation. For some migratory bird species, their residences will be protected year-round under SARA. Further, permits are also required to conduct activities that contravene the critical habitat destruction prohibitions for migratory bird species at risk.

As of November 20, 2024, ECCC has not received a request for a Species at Risk Permit under SARA. ECCC would require detailed information on the potential effects of the Project, including locations and/or occurrences of species at risk, their use of habitat and critical habitat within the project area, and specific effects on federal land, to determine whether a SARA permit(s) would be required. For any SARA permit issued by ECCC, ECCC would evaluate and determine any Indigenous consultation requirements.

Canadian Navigable Waters Act

The *Canadian Navigable Waters Act* (CNWA) applies to projects that will interfere with navigable waters. TC may be required to exercise a power or perform a duty or function with respect to the CNWA, however, further detailed project information is needed to determine if an approval under the CNWA would be required and to determine potential effects of the Project on navigation. If works are taking place on a scheduled waterway or are a major work (that are likely to substantially interfere with navigation), review and approval is required under the CNWA. The CNWA approval process considers use of navigable waters by Indigenous peoples. If the works are taking place on an unscheduled waterway and are not a major work, the Proponent may choose to apply for approval under the CNWA, or undertake a public resolution process, which does not require review by TC.

Approval for bridge works may be required by TC for navigable waters not listed by TC, depending on the final design of the Project. The Proponent will either submit a voluntary application or undertake the public resolution process. The approval requires that water levels or water flow is maintained for navigation



purposes in navigable water and requires Indigenous and public consultation. As of November 20, 2024, TC has not received a request for a review and approval for the Project.

Railway Safety Act

The *Railway Safety Act* sets out requirements for proponents with respect to access, operating on, across, and/or over the tracks of a federally-regulated railway. The review process under the *Railway Safety Act* would include requirements for safe operation of railways. Any works conducted on the Project must be in compliance with the *Railway Safety Act* and associated regulations, which is administered by TC, for any works on, across, and/or over the tracks of a federally regulated railway. Any deviation from the engineering standards would require approval from the Minister. IAAC understands that the Proponent is in the preliminary design stage, and the application of the *Railway Safety Act* will be considered during detailed design.

Explosives Act

The *Explosives Act* applies to projects that involve explosives (i.e., blasting explosives, fireworks and pyrotechnics, ammunition, rocket motors and special purpose explosives such as flares and reactive targets). The *Explosives Act* also covers chemicals that have many legitimate uses (for example, they can be used as fertilizers, cleaning products, stump removers, paint thinners, camping fuel tablets or nail polish remover) but that could also be misused to illegally manufacture homemade explosives. These are called “restricted components.” Under the *Explosives Act*, proponents may need a licence, certificate, permit or enrolment to work with explosives or restricted components, depending on the type and the amount.

A license, certificate or permit may be required pursuant to the *Explosives Act* issued by the Minister of Natural Resources if the Project requires working with explosives. Should an explosives license be required, NRCan may undertake engagement and consultation with Indigenous communities potentially affected by the project. IAAC understands that the Proponent is in the preliminary design stage, and the application of the *Explosives Act* will be considered during detailed design.

Provincial Legislative Mechanisms

Highway 413 Act, 2024

The *Highway 413 Act, 2024*, part of Ontario Bill 212, the *Reducing Gridlock, Saving You Time Act*, received Royal Assent on November 25, 2024, and came into force at that time. The *Highway 413 Act, 2024* exempts the Project from the Ontario *Environmental Assessment Act* and creates an accelerated assessment process for its construction. The Proponent has indicated that the *Highway 413 Act, 2024* does not replace either the requirements set out in the signed Memorandum of Understanding and the Terms of Reference, or the requirements to obtain any provincial or federal permits or authorizations, other than the exemption from the Ontario *Environmental Assessment Act*.

The *Highway 413 Act, 2024* requires the Ontario Minister of Transportation to develop and implement an Indigenous consultation plan, assess impacts of the Project on the environment, prepare a draft Environmental Impact Assessment (EIA) Report and publish studies described in the EIA Report, provide



notice and an opportunity for Indigenous communities and members of the public to provide written comments on the EIA Report, and prepare a final EIA Report. An addendum process is provided to deal with any significant changes to the Project.

The EIA Report would include a description of studies of the environment in relation to: fish and fish habitat; terrestrial ecosystems; archaeological resources; air quality; agriculture; noise; socio-economic conditions; and drainage and stormwater management. The Proponent has committed to complete and publish all environmental impact assessment studies that were completed under the environmental assessment as part of the Ontario *Environmental Assessment Act* in finalizing the Preliminary Design of the Project.

Early works projects identified in the *Highway 413 Act, 2024*⁷ are allowed to proceed while the accelerated assessment process is underway. The Proponent would be allowed to apply for and receive approval for provincial permits required for construction prior to completing the accelerated assessment process. The Proponent notes that the early works projects were specifically selected based on their low likelihood for adverse effects within federal jurisdiction, since their locations were previously disturbed. Any potential effects within federal jurisdiction or to federally-listed species at risk would be discussed with the Working Group, and the Proponent acknowledges that they would need to obtain any relevant federal permits or authorizations.

The draft EIA Report will include a consultation record including summaries of consultation carried out with Indigenous communities and with the public that include discussions, comments submitted, and concerns raised, along with a description of the Proponent's responses. In particular, the Proponent is required to identify Indigenous communities that have or may have existing Aboriginal or treaty rights, and any Indigenous communities that may otherwise be interested, and develop an Indigenous consultation plan to consult the identified communities on the impacts of the Project (including any significant changes) on Aboriginal and treaty rights, as well as to consult on the draft EIA Report and mitigation measures. The Proponent has noted that although sensitive information about natural or cultural heritage matters will be redacted from within the EIA Report, the information will still be available within factor-specific environmental reports to regulators, stakeholders, and Indigenous communities.

Endangered Species Act, 2007

The *Endangered Species Act, 2007*, which is administered by MECP, provides protections for provincially listed species at risk and their habitats, which include authorizations (such as permits, agreements and exemptions) for activities that could adversely impact endangered or threatened species at risk or their habitats.

⁷ a) constructing an embankment for a ramp near the existing ramp at Exit 330 on westbound Highway 401, connecting to westbound Highway 407 in Halton Region;

b) constructing a bridge within the Highway 413 route that is within or near Highway 10 in Peel Region. The Proponent has an existing project planned to resurface a section of Highway 10 and will construct the underpass at the same time;

c) constructing a bridge within the Highway 413 route that is within or near Bovaird Drive West in Peel Region. Peel Region is widening this portion of Bovaird Drive at the same time;

d) any related activities for the embankment or bridges described in a) to c); and,

e) constructing fencing for or related to any of the activities described in a) to d) or for or related to the Project.



In 2019, the province of Ontario started a 10-year Species at Risk Stewardship Program⁸ that will support on-the-ground activities that benefit species at risk and their habitats. This includes enhancing government oversight and enforcement, improving transparency of new species' listings, appropriate consultation and creating new tools to streamline processes to reduce duplication efforts incurred by clients.

An authorization may be required for activities of the Project that could adversely impact terrestrial species at risk listed under the *Endangered Species Act, 2007*. MECP would advise the Proponent on consultation requirements.

Ontario Water Resources Act

The *Ontario Water Resources Act* provides for the conservation, protection and management of Ontario's water and its efficient and sustainable use, to promote Ontario's long-term environmental, social, and economic well-being.

A Permit to Take Water, pursuant to the *Ontario Water Resources Act*, is required if temporary water takings are estimated to be greater than 400,000 litres of water per day. The permit would include requirements to assess impacts to surface water and groundwater quantity and quality due to project activities. The permit may place limits on the quantity and duration of water-taking and would require reporting. Additional conditions could include monitoring requirements, seasonal restrictions, modifications to discharge locations, and remediation. The permit may require Indigenous and public consultation.

The Proponent may be required to apply for an Environmental Activity and Sector Registry (EASR) for construction dewatering. The registration is required for temporary water takings of groundwater and/or stormwater for the purpose of construction dewatering and have volumes greater than 50,000 litres of water per day, but less than 400,000 litres of water per day. The discharge or transfer of the water taken to a sewage works would require an Environmental Compliance Approval (ECA).

The Proponent may be required to file a Records of Site Condition depending on the detailed design for identification of contamination through drilling and soil sampling, identify risk management measures, and develop remediation plans. Potential conditions could include developing and implementing groundwater monitoring plan, vapour/air quality monitoring plan, vapour intrusion mitigation measures inspection and maintenance program with annual reporting requirements.

The Proponent may be required to apply for an ECA for Industrial Sewage under the *Ontario Water Resource Act* Section 53. The ECA would be required for sewage works involving collection, transmission, treatment or disposal of sewage generated from project activities. This includes works to handle storm runoff and domestic sewage.

Safe Drinking Water Act, 2002

The Proponent may need to apply for a Drinking Water Works Permit, issued by MECP, pursuant to Ontario's *Safe Drinking Water Act, 2002*. The permit includes requirements to monitor and record indicators of water

⁸ <https://news.ontario.ca/en/release/51914/implementing-recommendations-of-ontarios-10-year-review-of-the-endangered-species-act-launching-45m-species-at-risk-stewardship-program>



quality and environmental effects and provision for contingencies to prevent and deal with accidental spills or upsets.

Ontario Heritage Act

The *Ontario Heritage Act* is administered by the Ontario Ministry of Citizenship and Multiculturalism (MCM). MCM's mandate involves conserving, protecting and preserving Ontario's cultural heritage. Their programs include guidance for archaeological studies and discoveries, and they require Indigenous consultation regarding discoveries that matter to Indigenous peoples.

The *Ontario Heritage Act* requires the Proponent to conduct archaeological assessments for the Project and follow protocols to protect any discovered archaeological resource. The Proponent completed a Stage 1 Archaeological Assessment in 2015, and a Stage 2 Archaeological Assessment in accordance with Stage 1 findings. Stage 3 and 4 archaeology assessments may be required, and conditions of further archaeology assessments could include: fieldwork timing window restrictions around species-at-risk migrations or habitations; compensation for crops, no till/low till soil impacts; monitoring by a licensed archaeologist during construction as part of archaeological site avoidance and protection strategies (if full mitigation by excavation was not conducted prior); implementing an archaeological resources protection or contingency plan during construction; compliance with other sections of the *Ontario Heritage Act* and the *Funeral, Burial and Cremation Services Act, 2002*; development of an Access Management Plan; and other conditions, based on the recommendations of the archaeological assessment.

As a provincial ministry, the Proponent is subject to Ontario's Standards and Guidelines for Conservation of Provincial Heritage Properties, which includes identification and evaluation of properties with cultural heritage value that may be impacted by the Project. Criteria for determining cultural heritage value or interest are listed in Ontario Regulation 9/06. Through the *More Homes Built Fast Act, 2022*, a property would need to meet two or more criteria in Ontario Regulation 9/06 to be identified as a Provincial Heritage Property; however, the Proponent has been advised by MCM to maintain the current cultural heritage evaluation framework that only requires one criterion in Ontario Regulation 9/06 to be met to be identified as a Provincial Heritage Property. The Proponent will request consent of the Ontario Minister of Citizenship and Multiculturalism for the demolition or removal of any buildings or structures on a Provincial Heritage Property of provincial significance, or for transfer of the property, in whole or in part, out of provincial control. The Ontario Minister of Citizenship and Multiculturalism may grant consent, with or without conditions, where they are of the opinion that the removal, demolition or transfer is the best option after all alternatives have been considered by the Proponent.

Adverse Effects within Federal Jurisdiction that Carrying Out the Project May Cause

IAAC's analysis identified that the carrying out of the Project may cause adverse effects within federal jurisdiction as defined in subsection 2(1) of the IAA, including adverse impacts on the rights of Indigenous peoples, with consideration of subsection 9(2) of the IAA. As outlined below, IAAC is of the view that existing legislative mechanisms and the Memorandum of Understanding provide a framework to address those potential adverse effects within federal jurisdiction. Federal and provincial legislative and regulatory mechanisms relevant to the Project described above were considered in IAAC's analysis.

Fish and Fish Habitat, including Aquatic Species at Risk

IAAC considered information provided by the requester, Proponent, Mississaugas of the Credit First Nation, Six Nations of the Grand River, DFO, ECCC, HC, and members of the public, and is of the view that the Project may cause adverse effects to fish and fish habitat, as defined in subsection 2(1) of the *Fisheries Act* and in subsection 2(1) of SARA. (The Project is not expected to affect the marine environment or marine plants.) However, IAAC is of the view that existing legislative mechanisms provides a framework to address these potential adverse effects.

Concerns expressed by the requester, Mississaugas of the Credit First Nation, Six Nations of the Grand River, DFO, ECCC, and the public, include:

- Works to occur at approximately 95 watercourse crossings in four main watersheds, including Sixteen Mile Creek, Credit River, Etobicoke Creek, Humber River and their associated tributaries and wetlands. These works may result in the death of fish and/or harmful alteration, disruption or destruction to fish habitat;
- Potential adverse effects to federally-listed aquatic species at risk (Redside Dace and Silver Shiner) from the proposed watercourse crossings; and,
- Adverse effects on water quality may occur from contaminants introduced into waterbodies through disturbance of soils, rocks and streambanks; storm water runoff; wastewater discharge; groundwater resurgence; or spills.

The Proponent plans to mitigate effects on fish and fish habitat by performing construction activities within the applicable in-water timing windows to protect fish; implement sedimentation and erosion control measures during construction; and design project infrastructure to minimize the potential for permanent impacts on waterbodies, damage to riparian vegetation, and to account for fish passage, hydraulic, erosion and meander characteristics. Any loss or permanent alteration of fish habitat that cannot be avoided or mitigated would be offset as part of an application for authorization under the *Fisheries Act*. The Proponent has committed to working with DFO to identify potential impacts and required authorizations under the *Fisheries Act*.

The Recovery Strategy for Redside Dace in Canada was finalized in July 2024, while the Recovery Strategy for Silver Shiner in Canada was finalized in September 2022. DFO has indicated that their critical habitat may occur in the areas proposed for the Project. Redside Dace is listed as endangered and Silver Shiner is listed as threatened under SARA. Redside Dace and Silver Shiner are classified as endangered and threatened, respectively, under Ontario's *Endangered Species Act, 2007* and both have a provincial recovery strategy.

Authorizations that may be required for the Project include:

- Authorization pursuant to the *Fisheries Act* paragraph 34.4(2)(b), issued by DFO if project activities may result in the death of fish;
- Authorization pursuant to the *Fisheries Act* paragraph 35(2)(b), issued by DFO for harmful alteration, disruption or destruction to fish habitat that the Project may cause; and,
- Permit(s) pursuant to subsection 73(1) of SARA, issued by DFO for activities affecting listed wildlife species, any part of its critical habitat or the residences of its individuals.

DFO notes that the *Fisheries Act* authorization(s) may also act as a SARA permit in relation to aquatic species at risk. Under Section 73(3) of SARA, a Jeopardy Assessment will be conducted prior to the issuance of a Permit to ensure the survival and recovery of the species.

An authorization under the *Fisheries Act* would include a requirement to assess, mitigate, offset (as required) and monitor effects arising from carrying out a work, undertaking or activity that results in the death of fish or harmful alteration, disruption or destruction of fish habitat. The authorization processes would consider and require detailed project information to understand the potential adverse effects and identify appropriate mitigation and offsetting measures. The authorization process would involve Indigenous consultation and/or accommodation to address adverse impacts of the Indigenous communities whose rights are recognized and affirmed by section 35 of the *Constitution Act, 1982*.

Relevant provincial legislation includes:

- Permit to Take Water, pursuant to the *Ontario Water Resources Act*, issued by MECP, which would set limits for water taking to protect water levels in surrounding waterbodies;
- Environmental Activity and Sector Registry (EASR) registration for construction dewatering issued by MECP, pursuant to the *Ontario Water Resources Act*;
- Environmental Compliance Approval (ECA) for discharge to sewage works, issued by MECP, pursuant to the *Ontario Water Resources Act*;
- Environmental Compliance Approval (ECA) for any works for industrial sewage, issued by MECP, pursuant to the *Ontario Water Resources Act*; and,
- The *Highway 413 Act, 2024* requires the Proponent to assess the impacts of the Project on the environment, provide studies related to fish and fish habitat, and identify mitigation measures.

IAAC is of the view that existing legislative mechanisms such as the *Fisheries Act*, SARA, Ontario's *Endangered Species Act, 2007*, *Highway 413 Act, 2024*, *Ontario Water Resources Act* along with the Working Groups stemming from the Memorandum of Understanding, provide a framework to address potential effects to fish and fish habitat and aquatic species at risk.

Migratory Birds

IAAC considered information provided by the requesters, the Proponent, Mississaugas of the Credit First Nation, Six Nations of the Grand River, and ECCC, and is of the view that the Project has the potential to cause adverse effects to migratory birds, as defined in subsection 2(1) of the MBCA 1994. However, IAAC is also of the view that existing legislative mechanisms provide a framework to address these potential adverse effects.

Concerns raised by the requester, Mississaugas of the Credit First Nation, Six Nations of the Grand River, and ECCC, include:

- Mortality from collisions with project vehicles or infrastructure;
- Individual mortality and the destruction of nests and eggs or any other structures necessary for the reproduction and survival of migratory bird species at risk, particularly during site preparation;
- Sensory disturbances, such as noise, artificial lights, and vibrations from the operation of machinery;
- Barriers to movement; and,
- Effects from oil or chemical spills if the spilled substances make their way into the habitats of migratory birds and species at risk.

The Proponent indicated that they would mitigate effects through measures such as seeking design specific recommendations from project ecologists for avoidance and mitigation of impacts to migratory bird habitat; implementing avoidance timing windows to avoid effects on birds during the breeding season of April 1 to August 31; undertaking a breeding bird and nest survey if activities are proposed during the general nesting period; and regular monitoring to confirm that activities do not encroach into nesting areas or disturb active nesting sites.

ECCC indicated that Damage or Danger Permit(s) under the MBR 2022 may be required for species with year-round nest protection (e.g., Great-blue heron, Green Heron, Pileated Woodpecker and Black-crowned Night Heron). There are nine federally-listed migratory bird species at risk that may be affected by the Project of which seven are listed as threatened or endangered⁹. All nine species are protected under the MBCA 1994 with additional residence protection under SARA for the threatened and endangered species. Three of the seven species have published recovery strategies both federally and provincially which includes protection for their critical habitat: Red-headed Woodpecker (endangered), Bank Swallow (threatened) and Chimney Swift (threatened).

The Recovery Strategies for Bank Swallow and Chimney Swift were published in April 2022 and August 2023, respectively. Provincially, both species are classified as threatened under Ontario's *Endangered Species Act, 2007*, and have provincial recovery strategies since 2016 and 2024, respectively. The Recovery Strategy for the Red-headed Woodpecker was published in January 2021. Provincially, it is classified as endangered under Ontario's *Endangered Species Act, 2007*, and has a provincial recovery strategy since 2022.

⁹ Federally listed threatened or endangered migratory bird species at risk potentially impacted by the Project include: Bank Swallow; Barn Swallow; Bobolink; Chimney Swift; Eastern Meadowlark; Red-headed Woodpecker; and Wood Thrush. Eastern Wood Pewee and Grasshopper Sparrow are federally listed as special concern.

ECCC has provided advice to the Proponent and is committed to continue to work together in the Working Group related to migratory bird species at risk that stems from the Memorandum of Understanding. ECCC's advice has focused on potential impacts on the Red-headed Woodpecker and Bank Swallow and the application of the mitigation hierarchy to address potential impacts. ECCC indicated that the project footprint crosses through two critical habitat units for the Red-headed Woodpecker and one unit for Bank Swallow. The critical habitat for the Chimney Swift will be determined during the detailed design of the Project, during the evaluation of chimneys that will be impacted. ECCC also noted that the residences of Red-headed Woodpecker and the Chimney Swift have year-round protection.

For federally-listed wildlife species on lands that are not federal lands, permits or authorizations may be required under SARA, including the following:

- Permit(s) under section 73 for listed migratory bird species at risk residences, that are protected by the MBCA 1994, for activities that contravene the prohibitions under section 33; and,
- Permit(s) under section 73 for listed migratory bird species at risk's critical habitat, that are protected by the MBCA 1994, may be applicable under a specific set of circumstances, as described in subsection 58(1).

Additional information would be required for a potential SARA permit in relation to the impacts to residences for Red-headed Woodpecker, Barn Swallow and Chimney Swift. For any SARA permit issued by ECCC, ECCC would evaluate and determine any Indigenous consultation requirements.

Relevant provincial legislation includes:

- Permit or authorization issued by MECP, pursuant to Ontario's *Endangered Species Act, 2007*¹⁰, for endangered or threatened species at risk or their habitats during project activities, to provide surveying, mitigation, compensation and monitoring requirements;
- Compliance with *Highway 413 Act, 2024* which includes a Terrestrial Impact Assessment Report; and,
- Compliance with the Ontario *Safe Drinking Water Act, 2002* with respect to minimizing and responding to spill events.

IAAC is of the view that existing legislative mechanisms including the SARA, MBCA 1994, MBR 2022, *Highway 413 Act, 2024*, Ontario's *Endangered Species Act, 2007* and the *Safe Drinking Water Act, 2002*, along with the Working Group stemming from the Memorandum of Understanding, provide a framework to address potential effects to migratory birds and terrestrial species at risk.

Indigenous Peoples

IAAC considered information provided by the Proponent, the Mississaugas of the Credit First Nation and Six Nations of the Grand River, ECCC, DFO, TC, HC, on the Project. IAAC is of the view that the Project may cause an impact that results from any change to the environment on physical and cultural heritage, the current use of lands and resources for traditional purposes, or on any structure, site, or thing that is of

¹⁰ An authorization may be required under Ontario's *Endangered Species Act, 2007* for the following federally-listed migratory bird species at risk: Bank Swallow; Barn Swallow; Bobolink; Chimney Swift; Eastern Meadowlark; and Red-headed Woodpecker. The following wildlife species potentially impacted by the Project are listed as special concern on Schedule 1 of SARA and therefore, are not subject to its prohibitions: Eastern Wood Pewee, Grasshopper Sparrow and Wood Thrush.



historical, archaeological, paleontological or architectural significance to the Indigenous peoples. However, IAAC is also of the view that existing legislative mechanisms provide a framework to address these potential adverse effects.

Concerns expressed by the requester, Mississaugas of the Credit First Nation and Six Nations of the Grand River, and HC, include:

- Impacts to archaeological resources and heritage resources of significance to communities;
- Impacts to archaeological sites and cultural landscape within watersheds of significant importance (Sixteen Mile Creek, Etobicoke Creek, Humber River, and Credit River);
- Impacts to traditional gathering (i.e., traditional medicine) and harvesting (fishing and hunting) concerns stemming from potential adverse effects on fish and fish habitat, habitat for birds, vegetation and wildlife, including species at risk; and,
- Impacts to health from changes to air quality.

Physical and Cultural Heritage, and Structures, Sites or Things of Historical, Archaeological, Paleontological or Architectural Significance

The Proponent conducted a Stage 1 archaeological assessment, pursuant to the *Ontario Heritage Act*, in 2015 during the Route Planning Phase¹¹ of the Project. The results indicated that ground disturbance activities associated with the Project could impact unassessed or undocumented archaeological resources. Six Nations of the Grand River also indicated that the Project could impact archaeological resources of significance to the community.

The Proponent indicated that they have also completed a Stage 2 Archaeological Assessment in accordance with the Stage 1 findings. If necessary, they will complete Stages 3 and 4 archaeological assessments. They are also completing cultural heritage assessments, including documentation and evaluation of built structures, buildings of historical interest, and landscapes. All findings related to these assessments will be shared with the potentially impacted Indigenous communities, and they will be consulted in developing a strategy to avoid or mitigate impacts to Indigenous archaeological resources.

The Proponent has indicated they will complete Cultural Heritage Evaluation Reports in accordance with the requirements of the *Ontario Heritage Act* to document existing conditions and outline next steps for determining any potential effects to physical and cultural heritage. They have noted that at the time of this analysis, approximately 50 Cultural Heritage Evaluation Reports are being completed as part of the Preliminary Design with additional Heritage Impact Assessment reports to be completed as part of the Project.

An authorization may be required for removal, demolition or transfer of heritage resources that may be impacted, issued by the Ministry of Citizenship and Multiculturalism, pursuant to the *Ontario Heritage Act*.

¹¹ During this phase for the Project, the proponent considered transportation modes in the project area, and their ability to address the future transportation demands by 2031.



Should demolition of structures be required, demolition permits may be required from the regions of York, Peel or Halton.

Additionally, if unexpected archaeological resources are encountered (or suspected), all work would stop. The site would be protected until assessed by a licensed archaeologist. Consultation with relevant Indigenous communities would be initiated if archaeological resources or human remains are discovered.

Current Use of Lands and Resources for Traditional Purposes

Potential adverse effects on fish and fish habitat, vegetation and wildlife during construction and operation could potentially impact traditional use such as hunting, fishing and harvesting.

Mississaugas of the Credit First Nation indicated that the lack of regular use of the lands and waters currently in the proposed location of the Project does not mean that there would not be future use.

TC noted that the Project may affect the Indigenous use of waterways for navigation. Where works are taking place on a scheduled waterway or are a major work, review and approval is required under the CNWA, which considers Indigenous use of waterways for navigation.

The Proponent has indicated they will consult with all potentially impacted Indigenous communities in the current and subsequent phases of the Project to understand and mitigate potential impacts. The Proponent indicated they are in the process of finalizing offers for funding to support community capacity to participate in the consultation activities anticipated for the remainder of the preliminary design phase. The Proponent would implement measures to mitigate the effects on fish and fish habitat, vegetation and wildlife, in accordance with the requirements of the applicable federal and provincial authorizations, and in consultation with the potentially impacted Indigenous communities.

Health, Social or Economic Conditions of the Indigenous Peoples of Canada

HC noted that Indigenous people have historically practiced, and may still be practicing, traditional activities (including harvesting from the natural environment for medicinal, food, social and ceremonial purposes) throughout the proposed project area. Therefore, Indigenous peoples may be exposed to elevated levels of project-related emissions (e.g., air pollutants and noise) during such traditional activities should they occur near the project area.

The Proponent has indicated they have completed a preliminary impact assessment and are drafting a Draft Air Quality Technical Report as part of finalizing the Preliminary Design. The assessment will determine the relative contribution to ground level pollutant concentrations of specific current or future source emissions at receptor sites using modelling techniques.

The Proponent has also indicated they are completing a Human Health Implications Study which includes a Screening Level Human Health Risk Assessment of potential air quality impacts, evaluation and characterization of Project-related impacts to health and recommendations to enhance potential positive impacts and mitigate potential negative health impacts.



The impacts on health, social and economic conditions of Indigenous peoples would be assessed through provincial legislative mechanisms including an Environmental Compliance Approvals that would require Indigenous and public consultation.

The Proponent has indicated that the *Highway 413 Act, 2024* does not replace either the requirements set out in the signed Memorandum of Understanding, or the requirements to obtain any provincial or federal permits or authorizations, other than the exemption from the Ontario *Environmental Assessment Act*. The Proponent has also stated they are committed to ongoing consultation with Indigenous communities. Along with the requirements for Indigenous consultation as part of the *Highway 413 Act, 2024*, specific consultation and engagement requirements are also part of federal and provincial permits and authorizations. The Proponent indicated they are in the process of finalizing funding support for community capacity to participate in consultation activities anticipated for the remainder of the preliminary design phase.

IAAC is of the view that existing legislative mechanisms such as the *Fisheries Act*, SARA, MBCA 1994, MBR 2022, CNWA, *Explosives Act*, Ontario's *Highway 413 Act, 2024*, *Ontario Heritage Act*, *Ontario Water Resources Act*, *Endangered Species Act, 2007*, and the *Safe Drinking Water Act, 2002*, along with the Proponent's commitments and their legal and constitutional duty to consult Indigenous communities to understand and consider potential adverse impacts, provide a framework to address potential effects to Indigenous peoples.

Federal Lands

The potential for adverse effects within federal jurisdiction, as defined in section 2 of the IAA, would be limited through project design, by application of standard mitigation measures and managed through existing legislative mechanisms. IAAC is aware that the preferred route for the Project could potentially cause adverse effects on federal land managed by the Canadian Broadcasting Corporation (CBC) at 7524 Auburn Road, Milton, Ontario. This federal land would be approximately 40 to 50 metres away from the right-of-way at its closest point.

According to the Proponent, minimal disturbance of this land would occur as the preferred route does not directly cross this federal land, but it could be affected by ancillary uses or if refinements were made to the Project. The Proponent will work with CBC to understand potential effects on this federal land (e.g., light intrusion or noise) and propose the appropriate mitigation measures to minimize the potential impacts. CBC would work with the Proponent to manage any potential adverse effects on federal land at 7524 Auburn Road, Milton, Ontario.

IAAC is of the view that existing legislative mechanisms and mitigations will provide a framework to address potential adverse effects from the Project on federal land.

Other Effects

The Project is approximately 50 kilometres from the Canada-United States border, and approximately 290 kilometres from the Ontario-Quebec border. IAAC is of the view that the Project is unlikely to cause non-negligible adverse changes from pollution to the marine environment and to transboundary waters, as defined in section 2 of the IAA. As well, licences, permits and approvals required for the Project pursuant to the

Fisheries Act, SARA, Railway Safety Act, Explosives Act, CNWA, Ontario's Endangered Species Act, 2007, Ontario Heritage Act, Safe Drinking Water Act, 2002, and the Ontario Water Resources Act would set requirements to ensure that environmental effects are mitigated.

Direct or Incidental Adverse Effects

Direct or incidental adverse effects refer to effects that are directly linked or necessarily incidental to a federal authority's exercise of a power or performance of a duty or function that would permit the carrying out, in whole or in part, of a physical activity, or to a federal authority's provision of financial assistance for the purpose of enabling that physical activity to be carried out, in whole or in part. The carrying out of the Project has the potential to cause direct or incidental adverse effects; however, IAAC is of the view that existing legislation provides a framework to address them.

Terrestrial Species at Risk

The exercise of federal powers, duties, or functions (in particular, authorizations under the *Fisheries Act*) may affect the critical habitat¹² for two federally-listed species at risk on non-federal lands: the Western Chorus Frog (threatened) and Rapids Clubtail (endangered). ECCC has provided advice to the Proponent and is committed to continue to work together in the Working Group related to terrestrial species at risk that stems from the Memorandum of Understanding. ECCC's advice has focused on potential impacts on Western Chorus Frog and Rapids Clubtail and the application of the mitigation hierarchy to address potential impacts. ECCC has advised the Proponent that the Project intersects with the largest remaining critical habitat patch for Western Chorus Frog in Ontario, at the Humber River watershed. The critical habitat of Western Chorus Frog is neither offered protection under SARA, because this project is on provincial lands, nor under the *Ontario Endangered Species Act, 2007*, because it is not listed provincially¹³. ECCC advised the Proponent that Rapids Clubtail has only 4 extant subpopulations distributed in 7 patches, and that the Project would fragment and/or destroy the largest remaining Critical Habitat patch at the Humber River watershed. The critical habitat of Rapids Clubtail is protected under Ontario's *Endangered Species Act, 2007*, but not offered protection under SARA as the project is on provincial lands.

Relevant provincial legislation include:

- Permit or authorization issued by MECP, pursuant to Ontario's *Endangered Species Act, 2007*¹⁴, for endangered or threatened species at risk or their habitats during project activities, to provide surveying, mitigation, compensation and monitoring requirements;

¹² Critical habitat is the habitat necessary for survival or recovery of a species listed as endangered, threatened and extirpated under SARA that is identified in a recovery strategy or action plan for the species.

¹³ ECCC has stated that the Governor in Council, under section 80 of SARA, can make an emergency order for prohibitions under section 34 and/or 61, to specify the protection of individuals and residences and/or critical habitat of a federally-listed, terrestrial wildlife species that is on non-federal land. These may include conditions to prevent the extirpation or extinction of the remaining potentially-impacted Canadian indigenous species, subspecies, and distinct populations.

¹⁴ IAAC understands that an authorization may be required under the *Ontario Endangered Species Act, 2007* for the following federally-listed, terrestrial species at risk: Butternut; Jefferson Salamander; Little Brown Myotis; Northern Myotis; Tri-colored Bat; and Rapids Clubtail. The following wildlife species potentially impacted by the Project are listed as special concern on Schedule 1 of SARA and

- Compliance with *Highway 413 Act, 2024* which includes a Terrestrial Impact Assessment Report; and,
- Compliance with the Ontario's *Safe Drinking Water Act, 2002* with respect to minimizing and responding to spill events.

The Memorandum of Understanding established a joint federal-provincial Working Group governed by a Terms of Reference. This Working Group leverages collective expertise to protect the environment and ensure impacts to federally listed species at risk (including the Western Chorus Frog and Rapids Clubtail) and their critical habitats are considered before the project moves into the detailed design stage. Provincial and federal officials will recommend appropriate measures to minimize environmental impacts in areas of federal environmental jurisdiction. The Memorandum of Understanding specifies that MTO, as a Crown proponent, will undertake consultation with Indigenous communities for the Project in accordance with the honour of the Crown and its own guidance.

IAAC is of the view that existing legislative mechanisms including SARA, Ontario's *Endangered Species Act, 2007*, *Highway 413 Act, 2024*, and the *Safe Drinking Water Act, 2002*, along with the Working Group stemming from the Memorandum of Understanding, provide a framework to address potential effects to terrestrial species at risk.

Public Concerns

IAAC considered information provided by the David Suzuki Foundation and the Halton Hills Climate Action, and in a letter in relation to 29 species at risk¹⁵ signed by 120 scientists. Approximately 100 members of the public indicated support for designation of the Project. The requester noted in their submission that over 119,000 people have signed petitions requesting that the Project be cancelled.

Other views expressed by the requester, Region of Peel and the public included:

therefore, are not subject to its prohibitions: Eastern Milksnake; Eastern Ribbonsnake; Snapping Turtle; and Yellow-banded Bumble Bee. The following wildlife species potentially impacted by the Project are not listed on Schedule 1 of SARA and therefore are not subject to its prohibitions: American Eel, Lake Sturgeon.

¹⁵ The letter identified 29 species at risk. These include the following 12 bird species: Barn Swallow, Bank Swallow, Bobolink, Canada Warbler, Chimney Swift, Eastern Meadowlark, Eastern Wood-pewee, Grasshopper Sparrow, Least Bittern, Red-headed Woodpecker, Short-eared Owl and Wood Thrush; 10 amphibians, reptiles and fish: Blanding's Turtle, Eastern Milksnake, Eastern Musk Turtle, Eastern Ribbonsnake, Jefferson Salamander & Unisexual Ambystoma, Midland Painted Turtle, Northern Map Turtle, Redside Dace, Snapping Turtle, and Western Chorus Frog; 7 insects and trees: Yellow-banded Bumble Bee, Rusty-patched Bumble Bee, American Bumble Bee, Black Ash, Butternut, Monarch Butterfly and Rapids Clubtail. The migratory bird species at risk are protected through the MBCA, SARA and/or Ontario's *Endangered Species Act, 2007*. The Jefferson Salamander, Rapids Clubtail, Blanding's Turtle, Rusty-patch Bumble Bee, Butternut and Black Ash are protected by Ontario's *Endangered Species Act, 2007*. The Snapping Turtle, Eastern Musk Turtle, Midland Painted Turtle, Northern Map Turtle, Eastern Milksnake, Eastern Ribbonsnake, Yellow-banded Bumble Bee, and then American Bumble Bee are all listed as special concern or Not Listed and do not have critical habitat defined federally or provincially. The Western Chorus Frog is one of the species named in the Working Group under the Memorandum of Understanding with technical groups recommending appropriate measures to minimize environmental impacts in areas of federal environmental jurisdiction. The Redside Dace is protected by the *Fisheries Act*, SARA, Ontario's *Endangered Species Act, 2007*, and is a species named in the Working Group. The Monarch Butterfly is listed as endangered under Schedule 1 of SARA and special concern under Ontario's *Endangered Species Act, 2007*. No critical habitat has been formally defined for the Monarch Butterfly. ECCC noted that their concerns for the Monarch Butterfly were related to impacts to individuals as a result of road mortality and to habitation restoration, such that habitat restoration through native seed plantings should be undertaken in a way that does not increase the mortality risk for species at risk insects.

- Concerns for the loss of farmland;
- Concerns about health and air quality from pollution;
- Concerns regarding the effects of the Project on wildlife, wildlife habitat, species at risk, and natural heritage areas including conservation areas such as the Greenbelt;
- Concerns about the adequacy of the provincial legislation and mechanisms for the Project, including the new *Highway 413 Act, 2024* that exempts the project from a provincial *Environmental Assessment Act*, and allows for early works to proceed;
- Concerns about the need for the Project, and the consideration of alternatives to meet transportation needs; and,
- Concern about the effects of the project on affordable housing.

The analysis in previous sections take into account potential adverse effects within federal jurisdiction and direct or incidental adverse effects that may relate to these concerns. Therefore, IAAC is of the view that existing legislative mechanisms provide a framework to address these concerns, and to other potential public concerns related to potential adverse effects within federal jurisdiction.

Adverse Impacts on the Section 35 Rights of Indigenous Peoples

The concerns raised by Indigenous communities in relation to effects within federal jurisdiction described above are linked to potential adverse impacts on the rights of Indigenous peoples, where those rights are recognized and affirmed by section 35 of the *Constitution Act, 1982* (section 35 rights).

In relation to subsection 9(2)(b) of the IAA, IAAC is of the view that while there is the potential for the Project to cause adverse impacts on section 35 rights, existing legislative mechanisms applicable to the Project, and any consultation obligations associated with that specific legislative mechanism, may trigger the duty to consult thereby provide a framework to address potential impacts and allow for consultation with potentially affected Indigenous groups.

Mississaugas of the Credit First Nation and Six Nations of the Grand River expressed concerns that the Proponent has not and would not consult meaningfully during the provincial environmental assessment process. The Proponent, as a Crown ministry, is subject to its legal and constitutional duty to consult with Indigenous communities. IAAC understands that the Proponent has already begun consultation with Indigenous communities and that the Proponent is committed to meeting with Indigenous communities who reside near, use, or have a specific interest in the Project area; having ongoing dialogue with Indigenous communities directly affected by the Project; addressing concerns where possible; and conducting ongoing engagement for the life of the Project.

The Proponent, under the *Highway 413 Act, 2024*, is required to prepare, circulate and implement a plan for consultation. As part of the draft EIA Report, the Proponent will provide an opportunity for Indigenous communities to comment before the final report is published. In addition, the Proponent has committed to



consult with Indigenous communities to respond to questions and concerns raised by the communities, share information, provide capacity funding and provide transparency.

Potential adverse impacts on the section 35 rights are considered during the federal *Fisheries Act*, SARA, and CNWA processes, and also during provincial processes such as the *Highway 413 Act*, *2024 Ontario Water Resources Act*, *Endangered Species Act, 2007*, and the *Ontario Heritage Act*.

IAAC is of the view that existing legislative mechanisms, provide a framework to address potential adverse impacts on the section 35 rights of Indigenous peoples, and allow for consultation with potentially affected Indigenous groups.

Other Considerations

Cumulative Effects

Concerns expressed by the requester, members of the public, HC, Mississaugas of the Credit First Nation and Six Nations of the Grand River include:

- Concerns related to stormwater from the highway, and associated infrastructure and development, on the Redside Dace;
- Concerns related to developments on Greenbelt lands from the urban development enabled by the Project and the Project's interaction with the Greater Toronto Area Electricity Transmission Corridor, particularly in relation to migratory birds;
- Concerns related to cumulative effects from development and its impacts on the ability to carry out traditional practices;
- Concerns related to cumulative effects of urbanization;
- Concern relating to cumulative effects including socio-economic and cultural changes from rapid housing development which would be built near the proposed Project area; and,
- Concerns about whether the Project is compatible with Canada's climate change commitments in relation to greenhouse gas emissions.

DFO noted that it shall consider cumulative effects, among other factors, in making a decision on an authorization, as per subsection 34.1(1) of the *Fisheries Act*.

The Proponent has noted that they have prepared a Cumulative Effects Framework, which has been presented to Indigenous communities and has gone to the public for review.

For adverse effects within federal jurisdiction and direct and incidental adverse effects, with the information IAAC currently understands, IAAC is of the view that the direct potential for effects within federal jurisdiction and the residual adverse effects with application of standard mitigation measures would be limited, such that the Project's contribution to cumulative effects within federal jurisdiction would also be limited. Concerns outside of federal jurisdiction are not considered under subsection 9(1) or 9(2) of the IAA. That said, IAAC is of the view that existing legislative mechanisms provide a framework to address these concerns.

Policies and Commitments

On October 13, 2023, the SCC issued its decision on the constitutionality of the IAA, finding that the IAA was unconstitutional in part. On June 20, 2024, the amended IAA came into force to respond to the SCC decision by focusing decision-making, including the authority to designate, on areas of clear federal jurisdiction. For primarily provincially regulated projects, such as this highway, in decision-making at all stages of the process—including the exercise of the authority to designate—the focus is more narrowly on adverse effects in areas of federal jurisdiction as defined under the amended IAA. Transboundary effects are limited to areas of established federal jurisdiction identified under the IAA, such as pollution of transboundary waters and the marine environment and does not include greenhouse gas emissions.

Regional and Strategic Assessments

There are no regional or strategic assessments pursuant to sections 92, 93, or 95 of the IAA that are relevant to the Project.

Conclusion

IAAC considered the information it received as part of the designation request process for the Project to inform its analysis. IAAC is of the view that:

1. The Project has the potential to cause adverse effects in federal jurisdiction and direct or incidental adverse effects;
2. IAAC considered the factors in subsection 9(2) of the IAA and is of the view that:
 - a) existing legislative mechanisms, some of which include consultation with Indigenous communities and public engagement, provide a framework for addressing public concerns about potential adverse effects within federal jurisdiction and potential adverse impacts on the rights of Indigenous peoples that are recognized and affirmed by section 35 of the *Constitution Act, 1982*; and,
 - b) there is a means other than an impact assessment (such as the federal *Fisheries Act*, *SARA*, *MBCA 1994*, *MBR 2022*, *CNWA*, *Explosives Act*, and *Railway Safety Act*, and the provincial *Highway 413 Act, 2024*, *Endangered Species Act, 2007*, *Ontario Heritage Act*, *Safe Drinking Water Act, 2002*, and *Ontario Water Resources Act*, along with the Memorandum of Understanding) exist to address the potential adverse effects within federal jurisdiction, and the direct or incidental adverse effects, as described in subsection 9(1) of the IAA.