

Federal Areas of Responsibility and Action for Proposed Highway 413



The federal government is the approval authority for the Ontario Ministry of Transportation application to build a destructive 400 series highway through critical habitat for federally listed endangered species including aquatic species at risk in the northern GTA and the Greenbelt. This briefing note describes how the Ontario government has dramatically reduced environmental protection of these values, how the Impact Assessment Agency of Canada has highlighted the deficiencies of the Province's draft Initial Project Description and why and how the federal government should act to protect values under its jurisdiction.

Summary of Possible Impacts and Project Proponent Failures

Highway 413, known as the GTA West Corridor until 2021, is a proposed 400-series highway and possible future bus transitway (although transit is not currently included in the proponents plans) that would cut through the Ontario's Greenbelt, at The Nashville Conservation Reserve and the headwaters of three key river systems. The proposed highway would stretch from Highway 400 (between Kirby Road and King-Vaughan Road) in the east to Highway 401 between Mississauga and Milton in the west.

Highway 413 would have significant adverse effects on matters falling within federal jurisdiction. This briefing note highlights the scope of those impacts, and why provincial legislative and regulatory measures cannot reasonably be treated as "equivalent" to an independent assessment under the *Impact Assessment Act* - or as a substitute for other federal measures - when it comes to preventing or mitigating such impacts. It also provides details on the Ontario government's knowing selection of the worst possible alternative route despite the provincial government's own consultant's advice.

Scope of the Impacts of Highway 413

An Enormous and Damaging Route

- The highway corridor itself, including its integral infrastructure such as interchanges, would consume over 2000 hectares of land. This is an area equivalent to Bigwind Provincial Park near Bracebridge, Ontario's newest provincial park that was announced last year. Approximately 880 hectares of new paved surfaces would replace what is now farmland, wetlands and forests.
- In 2021, the Ontario government chose the most ecologically harmful crossing of the Humber River through the Toronto Region Conservation Authority's Nashville

Conservation Reserve - despite their own consultant's advice to use an alternative alignment for environmental and cost reasons.

Significant Potential Highway 413 Impacts to Federal Priorities

Federal Species at Risk Act, 2002:

- The proposed route has over 100 occurrences (representing 10 different species) of federal Species at Risk. These species are found in a variety of habitat types including river meadow (e.g. Rapids Clubtail), forest (e.g. Eastern Wood-Pewee, Butternut), and wetland (e.g. Snapping Turtle, Western Chorus Frog).
- A much larger area of habitat - including the portions of the Credit River, Sixteen Mile Creek, Etobicoke Creek and Humber River systems which lie downstream from these water crossings, would suffer significant salinity and temperature changes resulting in the destruction of habitat for the critically endangered Redside Dace, the Silver Shiner and many other inland fish species falling within federal jurisdiction.
- When the Initial Project Description (IPD) was being drafted, the proponent's consultant did not have critical habitat information for the Silver Shiner so neither the direct nor indirect effects were considered in the preferred routing for the highway.
- The draft federal Recovery Strategy for the Redside Dace (released in June 2024) includes new information including critical habitat including avoidance, mitigation and offsetting plans that were not integrated into the planning and design of Highway 413.
- As noted below, important federal species at risk such as the Western Chorus Frog are not afforded any protections in Ontario.

Fisheries Act, 1985:

- Over 100 watercourses including ones deemed "high priority" by Conservation Authorities would be impacted structurally by Highway 413. The highway can be expected to cause adverse impacts that are directly related to or incidental to a federal authority in the alteration, destruction or disruption of fish habitat under Section 35(1) of the Fisheries Act.
- While Redside Dace "contributing habitat" is not regulated under SARA, it is regulated under the Fisheries Act: any impacts that cannot be avoided or mitigated must be offset. The proponent to the best of our knowledge has not developed an offsetting plan in consultation with DFO, for residual effects to fish and fish habitat including for degraded Redside Dace habitat outside the Project footprint.

Migratory Birds Convention Act, 1994:

- Key migratory birds have not been evaluated as part of the alternatives route assessment for Highway 413. Mapping of critical habitat for the Bank Swallow (available from the federal Open Government Portal) was not used by the proponent to understand the impacts of the route on this migratory bird. Further, impacts of the highway on the critical habitats have not been considered for the Chimney Swift, Common Nighthawk, Barn Swallow and Eastern Whip-Poor-Will - all threatened species in Ontario and Canada.
- The draft IPD process flagged that the proponent had not provided a list of all the migratory birds recorded in the study area or with the potential to occur. The proponent was also requested to provide a description of the potential effects on migratory birds, and nests/eggs and habitat, especially for any migratory bird species at risk.

Canadian Navigable Waters Act, 1985:

- Due to changes in water infiltration and base-flow as a result of paving large sections of the headwaters of the Credit, Etobicoke and Humber rivers for Highway 413, there are potential adverse effects to navigable waters.
- There may also be impacts from the construction and operation of proposed bridged or any other project component that is being constructed temporarily or permanently on, over, under or across a navigable waterway.

Duty to Consult Obligations Under Section 35 of the Constitution:

- According to an initial assessment of route alternatives, there are 235 hectares of high archeological potential that include five registered pre-contact or contact indigenous archeological sites.
- Given the use of a streamlined EA by Ontario, it is unclear which archaeological requirements will be required, how diligently the assessments will be completed and how Indigenous communities will be consulted before construction begins on the Highway 413 project.

The Erosion of Protection for Species at Risk in Ontario

- The Ontario government has systematically weakened several key environmental protections which include: downgrading protection for key species at risk through the *More Homes, More Choice Act*; modifying the Ontario Wetland Evaluation System (OWES) to remove protection for wetland complexes; and discounting the presence of threatened and endangered species; and the 2023 introduction of regulatory changes that will reduce protection for a number of endangered and threatened species found along the Highway 413 project route (e.g. Rapids Clubtail and the Red-Headed Woodpecker).
- In April 2022, the Ontario government, through a regulatory change, established the Species at Risk Conservation Fund which is commonly referred to as the "Pay to Slay" fund. Project proponents can pay a species conservation charge to proceed with eliminating a species at risk. In January 2023, a number of species at risk

were added to the list of species that can be harmed or eliminated for a fee including the Short-eared Owl, the Butternut, Rapids Clubtail, Blanding's Turtle, Eastern Meadowlark and the Eastern Whip-Poor-Will - all threatened or endangered species found along the Highway 413 project route.

- Separately, the Ontario government's publicly-stated pre-determination that Highway 413 *will* be built, its insistence that construction will begin in 2025, and its posting of signage along a predetermined route makes it unreasonable to expect that provincially process and decision-making would be "equivalent" in its prevention or mitigation of adverse impacts within federal jurisdiction. In particular, it would be unreasonable to trust the provincial government to cancel the proposed highway, alter its route, or even to conduct comprehensive multi-year field studies required for mitigation.

The Worst Route along the Highway 413 Corridor for the Environment

- In 2021, at approximately the same time that the Federal government originally designated the project under the IAA, the Ontario government chose the most ecologically harmful crossing of the Humber River through the the Toronto Region Conservation Authority's Nashville Conservation Reserve - despite their own consultant advising them not to proceed with this option for environmental reasons and because of increased construction costs¹.

Necessary Federal Actions to Address Areas of Responsibility

- **Recommended Action:** **Designate the 413 Highway Project under the amended Impact Assessment Act due to the significant adverse effects in federal jurisdiction (fish and fish habitat, aquatic species at risk and impacts on Indigenous Peoples).**
- **Secondary Action #1:** Denial of permits by the Minister of Environment and Climate Change and/or Minister of Fisheries and Oceans under Section 73 of the Species at Risk Act (SARA) thereby refusing authorization for a person to engage in activities that will threaten the survival and recovery of species at risk or any parts of its habitat along the Highway 413 Project corridor.
- **Secondary Action #2:** For the Minister of Environment and Climate Change to register an Emergency Order for the Protection of key Species at Risk populations that have no protection in Ontario such as the Western Chorus Frog.
- **Secondary Action #3:** Denial by the Minister of Fisheries and Oceans of permits or authorizations including letters of advice under Section 35 of the Fisheries Act to authorise the harmful alteration, disruption or destruction of fish and fish habitat.

¹ *Toronto Star*, April 18, 2022, https://www.thestar.com/news/gta/doug-ford-s-government-picked-a-route-for-highway-413-its-own-experts-said-would/article_bab34447-7d9e-5afa-9bdf-1ff266a877d8.html

- **Secondary Action #4:** Listing by the Minister of Transportation of all watercourses intersecting the proposed Highway 413 route under s. 5 (1) (b) of the *Canadian Navigable Waters Act*.
- **Secondary Action #5:** Denial by the Minister of Transportation of approval for any work in, on, over, under, through or across any all watercourses intersecting the proposed Highway 413 route or any other tributaries of the Humber River, Credit River and Etobicoke Creek.

None of the above actions are a substitute for any of the others, and each of the above actions should be taken by the relevant Minister even if the other actions are not also taken.

Project Background

The Highway 413 proposal was officially rejected by Ontario’s provincial government in February 2018, on the recommendation of an expert GTA West Advisory Panel commissioned to evaluate its merits. As such no provincial Environmental Assessment and no federal Impact Assessment of the project was completed. However, in November 2018, the Progressive Conservative government announced, notwithstanding the recommendations of the GTA West Advisory Panel, that it intended to revive the Highway 413 proposal. It announced that it would resume the Provincial EA that had been initiated several years previous and paused in 2015. Since that time, a number of municipalities impacted by the highway have voiced their opposition to its construction.

On May 3, 2021 the Federal Minister of Environment and Climate Change [designated the Highway 413 Project](#) under the *Federal Impact Assessment Act (IAA)*. However, in October 2023, the Supreme Court of Canada stated - in an advisory opinion - that there were constitutional defects with the wording of the *Act*. Ontario’s Attorney General attempted to exploit this temporary vulnerability by initiating an application for Judicial Review of the federal decisions to designate the Highway 413 project before the defects in the *Act* could be remedied. In order to avoid an adverse finding with respect to the whole *Impact Assessment Act*, the federal Minister opted to discontinue that version of the designation.

In order to minimise harm until defects in the *Impact Assessment Act* could be repaired, the federal government entered into a Memorandum of Understanding (MOU) to “minimise environmental impacts in areas of federal environmental jurisdiction”. The MOU expressly provides that federal-provincial collaboration “on the assessment of effects in areas of federal jurisdiction, including the management of impacts to federally listed species at risk and their critical habitat” would not in any way fetter or prejudice federal statutory decisions with respect to the project. As such the MOU has no impact on the Federal Government’s power to issue orders or deny permits under the *Species at Risk Act*, *Fisheries Act*, and *Canadian Navigable Waters Act* and other federal legislation that prevent construction off Highway 413. The MOU also did not prejudice the “implementation of either party’s jurisdiction or legislative authorities”.

Weeks after the signing of the MOU, the federal government introduced amendments as part of the 2024 Budget implementation Act (BIA) to remedy the constitutional defects in the *IAA* and to restore its own power to designate Highway 413 (and other activities) for a

full, independent, federal impact assessment. These amendments were passed by Parliament and received Royal Assent, coming into force on June 20, 2024.

Presently the proponent, the Ministry of Transportation of Ontario (MTO), is in [phase three](#) of the "Highway 413 Transportation Corridor Route Planning, Preliminary Design and Environmental Assessment (EA) Project". While described as an Environmental Assessment, this exercise does not actually examine alternatives to this highway proposal, nor if the proposed highway route will have lasting detrimental environmental impacts.

While the proponent asserts that some fieldwork was undertaken in 2021 and 2022 under the Phase 2 fieldwork program, and that phase 3 Fieldwork is expected to be completed in December 2024. Any work "...to identify existing environmental conditions and determine potential negative and positive impacts is - by the proponent's own admission structured only "so that the negative impacts can be mitigated or avoided". The process appears to foreclose the cancellation of the highway, or the selection of an alternative solutions or route deviation in order to prevent or minimise adverse impacts.

As this memo will explore, any reliance upon a predetermined approach, or upon provincially-controlled decision-makers will result in significant adverse effects within federal jurisdiction.

Key Highway 413 Facts and Reduced Ontario Government Environmental Protections

The proposed highway corridor and its associated infrastructure would directly occupy 4,963 acres or 2008.5 hectares (1683 ha for the highway with another 325.5 ha dedicated for the transitway).

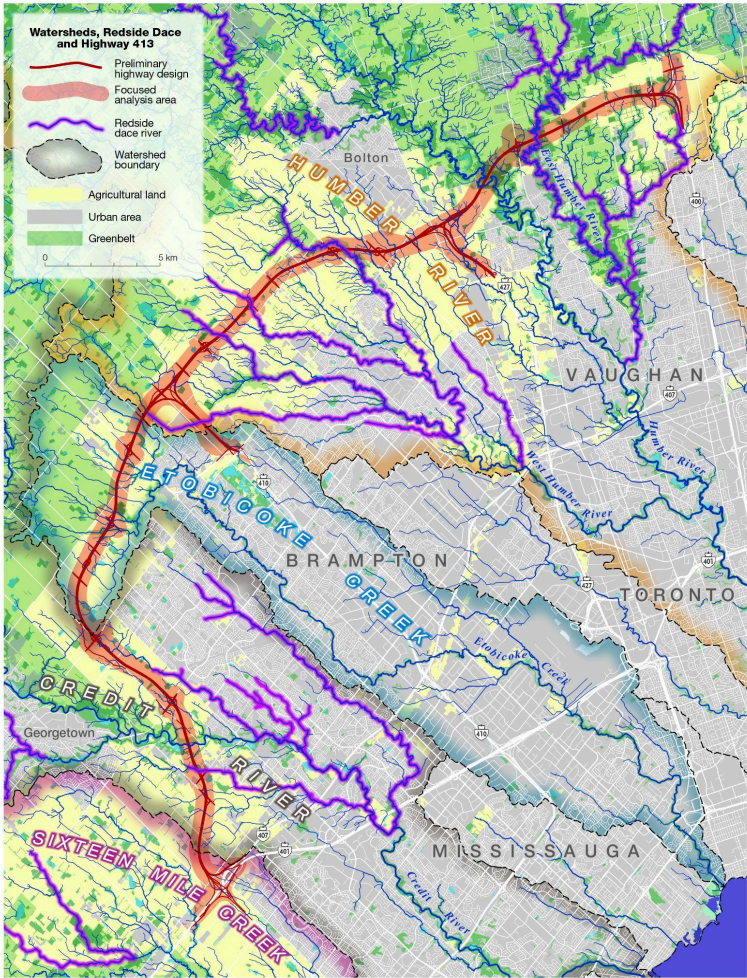
The project would consist of 880 hectares of new paved surfaces. The paved surface would be approximately 170 metres wide (110 m for vehicle lanes, 60 for transit lanes) and approximately 52 km long. The GTA West Highway would stretch across four municipalities from Highway 401 northeast to Highway 400 including from west to east: Halton Hills, Brampton and Vaughan. It would bisect the sensitive headwaters of four watersheds from west to east, including the easternmost Sixteen Mile Creek, a stretch of the Credit River, the entire width of Etobicoke Creek, and the Humber River while also paving over almost 400 acres of the Greenbelt.

The ecological footprint of the highway project cannot be underestimated:

- Approximately 100 watercourses will be structurally impacted. Of these crossings the Toronto Region Conservation Authority ranks 10 as "high priority" locations within their jurisdiction as they are in deep valleys with relatively high quality downstream habitat.
- existing or potential habitat, high regional connectivity, or high local connectivity.
- Over 110 occurrences (representing 10 different species) of federal or provincial Species at Risk have been identified in the study area. These species are found in a variety of habitat types including river meadow (e.g. Rapids Clubtail), forest (e.g. Eastern Wood-Pewee, Butternut), and wetland (e.g. Snapping Turtle, Western Chorus Frog).

- 35 different fauna species of local concern (with approximately 240 separate occurrences have been found inhabiting the proposed study area).
- 74 different flora species of local concern (with approximately 275 separate occurrences) have been identified in the proposed study area.
- In the TRCA jurisdiction alone, over 220 wetlands covering approximately 130 hectares will be impacted.
- The Ministry of Transportation of Ontario’s evaluation matrix identified the introduction of approximately 397 hectares of new impervious surface within the TRCA’s jurisdiction alone (Humber and Etobicoke watersheds) along the technically preferred route.

The Highway 413 project stands as a textbook example of outdated transportation planning that will supercharge sprawl in the Western part of the Greater Toronto Area. As with the lands adjacent to the 407 toll highway - what was previously undeveloped farmland has been converted to suburban sprawl in the last 30 years. Based on the track record of Highway 407 and Highway 410, we estimate that up to 60 percent of the farmland near the highway will be converted to residential and commercial sprawl by 2050.



Provincial Context: Key Legislative Amendments Have Eroded Protection for Species at Risk in Ontario

When the Endangered Species Act (ESA) was enacted in 2007, Ontario Nature, Sierra Legal, the David Suzuki Foundation and other groups heralded it as “the best endangered species act in the country.” This isn’t the case anymore as protections have been removed and broad exemptions are being granted from species’ protection rules for industrial and infrastructure activities.

The Ontario government has systematically weakened several key environmental protections including key conservation authority powers to protect the Humber and Credit rivers. Below, we list the most important legislative and regulatory changes since the initial designation of the Highway project:

- In May 2019, the *More Homes, More Choice Act*, changed the classification criteria used by the independent scientific committee, which may result in some species at risk not being protected in the future. The 2019 omnibus bill changed the Act to require the Committee on the Status of Species at Risk in Ontario to consider a species’ condition outside Ontario, and if the condition of the species across this broader area is determined to be at a lower risk level than if only the population in Ontario is considered, it must classify the species at the lower risk level. The Ontario government is currently proposing to downgrade the listing for an endangered dragonfly, the Rapids Clubtail, found along the 413 route as a result of the changed criteria.
- In December 2022, the Ontario government modified the Ontario Wetland Evaluation System (OWES) resulting in wetland complexes losing protection and the presence of endangered or threatened species at risk no longer factoring in wetland evaluations.
- Through Bill 23, *More Homes Built Faster Act, 2022*, the Ontario government also removed or diminished key Conservation Authority (CA) powers by for instance removing the ability of CAs to regulate development in flood plains.
- In December 2023, MECP introduced [regulatory changes](#) under the Endangered Species Act that will reduce protection for a number of endangered and threatened species along the proposed Highway 413 including the threatened Red-Headed Woodpecker and the Endangered Rapids Clubtail.

A scathing [2021 Auditor General of Ontario audit](#) found that between 2009, the first full year that the Act was in effect, and 2020:

- the total number of species at risk has risen by 22%;
- annual approvals for harming species at risk increased by 6,262%;
- annual stewardship funding has decreased by 10%; and
- the number of charges laid under the Endangered Species Act was zero in 2020.

The audit found that “...the Ministry was failing in its mandate to protect species at risk.” The audit also concluded that “...some species at risk may not be protected in the future,

as the Act’s classification criteria for species at risk was changed in 2019 and is now inconsistent with how species are assessed in other provinces across Canada.”

Another 2022 [audit by the Auditor General of Ontario](#) underlined that the Ministry of Environment, Conservation and Parks changed the Niagara Escarpment Plan so that protecting an endangered species’ habitat is no longer explicit grounds for the Niagara Escarpment Commission to refuse a development permit application. The Auditor General examined development permit applications submitted in 2020/21 for activities along the entire length of the Escarpment. For these applications, planners identified 27 (or 73%) as potentially having endangered species present. However, none of these cases resulted in the Ministry of the Environment, Conservation and Parks issuing a permit or other type of authorization under the Endangered Species Act, 2007.

New Information on Federal Areas of Responsibility

Environmental Defence’s 2021 request for federal Impact Assessment Act designation highlighted that provincial laws would not provide a proper assessment of the environmental impacts of construction -including upon fish habitat, federal species at risk and migratory impacts. A new request for a Federal impact assessment will introduce new concerns and new information since the original request was made in 2021.

Federal Jurisdiction over Fish and Fish Habitat

As the highway project is expected to cross over 100 stream crossings in the preferred route, it is expected that there will be significant adverse effects on fish and fish habitat. The Fisheries Act is the main federal legislation to manage and protect Canada’s fisheries resources. The highway project can be expected to cause adverse effects that are directly related or incidental to a federal authority in the alteration, destruction or disruption of fish habitat under Section 35(1) of the Fisheries Act.

A comparison of Federal and Ontario protection measures for the threatened Silver Shiner and the endangered Redside Dace demonstrate two very different approaches: one that considers the science behind the species and the latter that has failed to protect key species at risk.

The Silver Shiner and Redside Dace

The Silver Shiner is a relatively large, slender minnow that can grow up to 14.3 centimetres long. It is silver with some blue-green iridescence, a dark stripe down the centre of its back, and a long nose marked with two black crescents between the nostrils. The Silver Shiner’s fins are transparent or white with no spots or distinctive markings.

Redside Dace is a small, brightly coloured minnow that occupies small, cool water streams within riffle-pool areas that have a mix of surrounding forest and meadowlands with abundant overhanging vegetation. The presence of Redside Dace in a watercourse is strongly linked to stream flow and water quality, which can be impacted in urban and

agricultural watersheds. Redside Dace have declined throughout Southern Ontario over the past two decades and are listed as endangered under provincial and federal legislation.

While the Silver Shiner is considered 'threatened' and protected under Ontario's *Endangered Species Act, 2007*, the province has:

- a) failed to make a recommendation on developing a habitat regulation (a legal instrument that prescribes an area that will be protected as the habitat for the species). This is in contrast to the Federal approach where a recovery strategy has been accompanied by a Silver Shiner Action Plan that includes the identification of its [critical habitat](#).
- b) routinely issues permits to harm Silver Shiner individuals and habitat under an "overall benefit" permit to proponents in accordance with subsection 17(1) of the *Endangered Species Act, 2007*. Despite the limited reach of the silver shiner in the GTA (in Sixteenth Mile Creek whose upper reaches are in the Highway 413 project corridor), seven overall benefit permits were issued between 2020 and 2023 to harm this species and their habitat. Despite best practices and mitigation measures being employed in these construction projects (e.g. construction of 3rd Line overpass on the QEW), the Silver Shiner has not re-established itself following construction². The Silver Shiner has been extirpated from the rest of the Greater Toronto Area.

While the Redside Dace is considered 'endangered' and protected under Ontario's *Endangered Species Act, 2007*, the province has:

- a) Failed to follow through since its 2017 [government response statement](#) by not "...initiat(ing) (rehabilitation) projects in top priority areas that are adjacent to occupied reaches" or "investigate the effectiveness of habitat rehabilitation work that has been completed to date".
- b) Not delivered on the latest five-year progress review for the Redside Dace. Ontario's ESA requires the Ministry to conduct a review of progress every five years towards protecting and recovering a species from the publication of the government response statement. This review has *not* occurred since the last [five-year review](#) occurred in 2015 and despite the Committee on the Status of Species at Risk in Ontario (COSSARO) identifying in 2020 that the Redside Dace populations [continue to decline](#): "by over 50% in the last decade based on the reduction in its range and the number of sites where it is found".

The Redside Dace is now considered extirpated in the Don River and Grand River watersheds.

The Federal Redside Recovery Strategy concludes that the Redside Dace's "Range in several Greater Toronto Area (GTA) watersheds has retracted over several decades, to the remaining small, cool, headwater streams due to urbanisation". This trend was unfortunately confirmed almost a decade ago in Ontario's 2015 [Five-Year Review of Progress Towards the Protection and Recovery of Species at Risk](#) that indicated of the 17

² Professor N. Mandrak, personal communication, August 23, 2024.

watersheds where Redside Dace were known to exist, 13 of them were experiencing population declines of the species. In other words, the Redside Dace is in big trouble in the Greater Toronto Area.

The draft IPD review process flagged that the proponent should integrate new information from the federal Recovery Strategy for Redside Dace into the planning and design of the Project, including on avoidance, mitigation and offsetting plans. And that the proponent should provide mitigation strategies to minimize potential changes in water quality from additional chloride load in fish-bearing waterbodies.

Federal Jurisdiction on Species at Risk Protections

There are numerous species at risk in the Highway 413 project area. As mentioned, there are over 110 occurrences (representing 10 different species) of federal or provincial Species at Risk have been identified in the study area. These species are found in a variety of habitat types including river meadow (e.g. Rapids Clubtail), forest (e.g. Eastern Wood-Pewee, Butternut), and wetland (e.g. Snapping Turtle, Western Chorus Frog).

The Federal Species at Risk Act (SARA) aims to prevent wildlife species from disappearing, to provide recovery of extirpated, endangered or threatened species as a result of human activity. A comparison of protection for two species (the Rapids Clubtail and the Western Chorus Frog) illustrates two very different approaches: one that considers the science behind the species and the latter that has failed to protect the species at risk.

The Rapids Clubtail and the Western Chorus Frog

The Rapids Clubtail is a small (42 to 45 millimetre long) brightly coloured dragonfly with bluish-green eyes. It also has a light yellowish-green face that is striped with two dark lines, brownish-back and yellowish-green striped body and transparent wings.

The Western Chorus Frog is a small amphibian, ranging in colour from brown to olive grey, that weighs about 1 g and measures about 2.5 cm long as an adult. It has three dark lines along its back, one wider line on each flank, and a broad line that runs across the eyes.

The primary threat to the Rapids Clubtail is the degradation of river habitats. Activities which impede or alter the quantity and quality of water in the rivers, such as dams and pollution pose threats. Such degradation has led to the apparent demise of this species on the Credit River and the decline of the population on the Humber River.

While the Rapids Clubtail is listed as “Endangered” federally, the Ontario government recently introduced [regulatory changes](#) to reduce protection for the Rapids Clubtail by downgrading the species from “Endangered” to “Threatened”. This subpopulation found in an area where Highway 413 is proposed to cross the Humber River (see map below) - is one of only five extant sub-populations that remain in all of Canada. Through the draft IPD process, the proponent admitted that 21.06 hectares of suitable habitat for the Rapids Clubtail will be removed within the East and Main Humber River if the Highway 413 project moves forward.

According to the Initial Project Description (IPD), the largest remaining Western Chorus Frog critical habitat in Southern Ontario is presently in the direct path of the Highway 413 project. According to the IPD Process, the project proponent submitted through the impact assessment that 28.76 hectares of “confirmed breeding wetlands and candidate terrestrial and wetland habitat will be potentially, directly or indirectly impacted”.

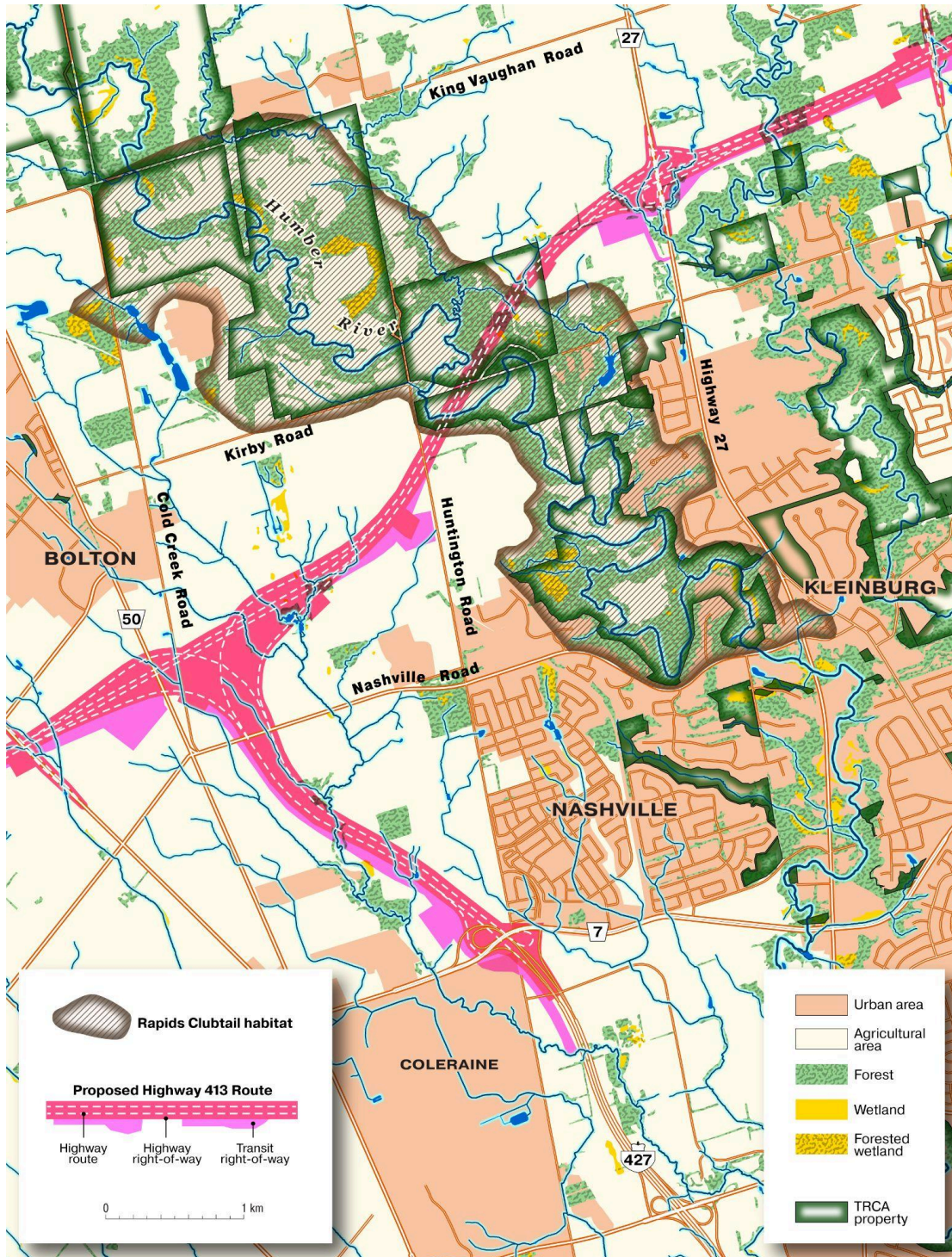
While the Federal government lists the Western Chorus Frog (Great Lakes-St. Lawrence population (east and north of Toronto) as “Threatened”, the Province of Ontario:

- a) The Western Chorus Frog is not listed as a Species at Risk and thus no protections are offered to this species in Ontario. Outside of provincial parks and conservation reserves, 96% of documented occurrences of Western Chorus Frog in Ontario are found on non-federal lands, where there are no instruments that explicitly prohibit the damage or destruction of Western Chorus Frog residences or habitat.
- b) A recovery strategy for the Western Chorus Frog has not been established by the Ontario government.

The draft IPD review process has flagged how federal species at risk, particularly the Western Chorus Frog, Red-Headed Woodpecker and Rapids Clubtail may not have been evaluated as part of the alternatives route assessment conducted for the Project. For the Western Chorus Frog, the IPD process suggested providing information about the design modifications that “are being considered to avoid or reduce direct and indirect impacts to Western Chorus Frog”. A suggestion was also made to avoid “areas that meet the definition of residence for Western Chorus Frog, including suitable wintering habitat within 300m from suitable breeding habitat...” when the Project only suggested a 30m wetland buffer area.

Map: Last Remaining Critical Habitat in the GTA for the Rapids Clubtail

Note that the Humber River crossing for Highway 413 also includes the largest remaining critical habitat for the Western Chorus Frog in Ontario but we are unable to publicly share those details due to a Non-Disclosure Agreement with Environment and Climate Change Canada.



The Project proponent also suggested relocating the Western Chorus Frog population but ECCC scientist commented that there is no established “salvage and re-location protocol for Western Chorus Frog” and therefore is “a higher risk mitigation measure”.

As part of the draft IPD review process, ECCC underlined to the Project proponent that mitigation measures should only be employed as a last resort and that “the first step in the hierarchy is avoidance, which should be considered to the extent possible before measures to minimize and then offset are discussed”.

Impacts on Indigenous Peoples

During the draft IPD review process, Indigenous Services Canada encouraged the proponent to include more mitigation measures such as including indigenous communities in archeology field work and to clarify if there are any current traditional use by any of the indigenous groups historically active within the project area.

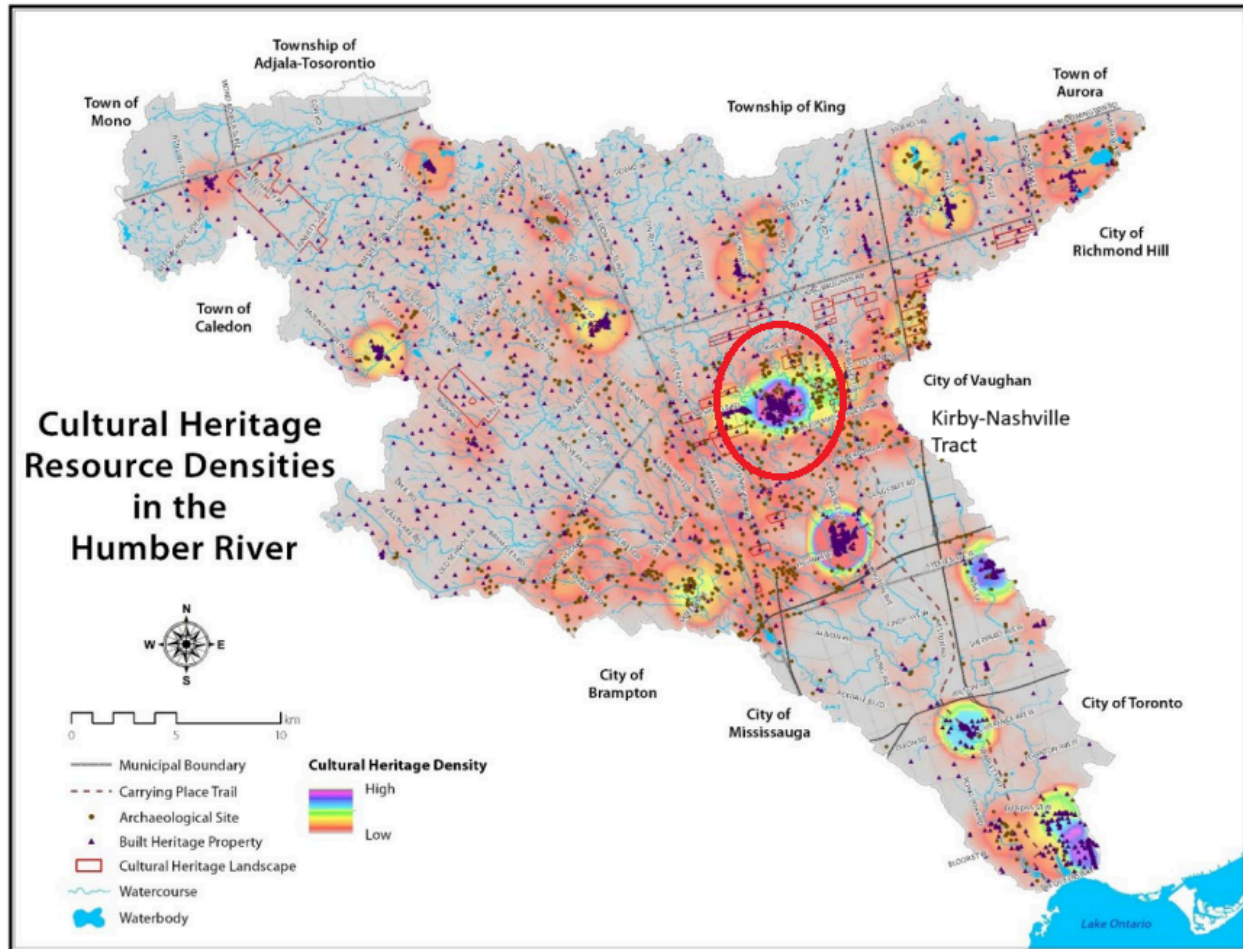
The draft IPD review process also identified that the Highway 413 Project had neglected to engage with Indigenous Knowledge Keepers - whose insights could help better understand “changes to current and future use of lands and resources for traditional/cultural purposes, including the potential loss or alteration of access to locations of importance to indigenous peoples”.

On the first point, the current statutory framework governing archaeological investigations and discoveries in Ontario and how the duty to consult and accommodate comes into play before and after archaeological discoveries are made - is currently a complex and vague set of rules or guidelines. In Ontario, through the Ontario Heritage Act (OHA), statutory and regulatory requirements about when to do a formal archaeological assessment before ground disturbance takes place are unclear. The key to when an archaeological assessment is required rests with the statutory “approval authority” for particular types of developments. Once an approval authority determines that an archaeological assessment is required, a consultant archaeologist engaged under a licence issued by MCTS will perform that assessment and be required to follow the Standards and Guidelines for Consultant Archaeologists.

According to an initial assessment of route alternatives, there are 235 hectares of archeological potential that include five registered pre-contact or contact Indigenous Archeological sites. Another route alternative contains 277 hectares of archaeological potential with three registered pre-contact or contact Indigenous Archeological sites.

The Toronto Region Conservation Authority (TRCA) has identified significant archeological potential in the Humber watershed especially where the 413 Highway project is anticipated to cross the main Humber river:

Humber River Watershed Characterization Report



Map 39 - Cultural Heritage Resource Densities in the Humber River Watershed (adapted from Cultural Heritage Rivers System and TRCA 2020)

Large public sector infrastructure projects require completion of EA requirements under various Class EA documents. Those EA processes are proponent-driven, and archaeological assessments may or may not be required when a class EA is to be completed. Given the use of a streamlined EA by Ontario, it is unclear which archeological requirements will be required and how diligently the archeological assessments will be completed and how Indigenous communities will be consulted before construction begins on the highway 413 project.

The Proponent Has Chosen the Most Ecologically Damaging Route for the Highway 413 Project

Through results obtained through a Freedom of Information (FOI) request, we now understand that the proponent was considering alternative routes at the Humber river in May 2020 but the [change in preliminary design](#) to a more ecologically harmful crossing was not publicly disclosed until a year later on July 28th 2021 at a public engagement session. The government of Ontario shifted the preferred route from S8-3 section to S8-5 - a decision that will have significant ramifications for species at risk.

A confidential report by the government's own consultant suggested that selecting S8-5 as the preferred route "would increase environmental assessment risk of non-approval and undermine the credibility of the entire route selection process."



Section 8 – Preliminary Evaluation Summary

- The preliminary evaluation shows a preference for Alternative S8-3
- Both the reasoned trade-off and the secondary arithmetic evaluation methodologies support S8-3. **If either S8-4 or S8-5 were selected as preferred in Section 8, this would increase environmental assessment risk of non-approval and undermine the credibility of the entire route selection process and GTA West Corridor EA project.**
- **Section 8 is arguably the most significant from a natural environment perspective of all 9 sections in the GTA West Corridor and S8-4 and S8-5 could have *negative net effects* for natural environment even after application of mitigation.**
- **Provincial land use policy does not support S8-4 and S8-5. These alternatives maximize incursions into Greenbelt NHS and Agricultural Lands, and are not consistent with the PPS or with regional or city policy.**
- Municipal land use planning policy through the North Kleinburg-Nashville SP explicitly gives precedence to the GTA West Corridor and Municipal land use planning is to reflect provincial land use planning policy. Approved municipal policy (NKN SP) takes precedence over council resolutions.



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The provincial government's own consultant warned that "Section 8 is arguably the most significant from a natural environment perspective of all 9 sections... and S8-5 could have *negative net effects* for natural environment even after the application of mitigation".

Despite the consultant's best advice, the Ontario government has moved forward with the most damaging route in crossing the main Humber River with the full knowledge that even with mitigation measures, there will be negative consequences.

Conclusion

Redesignation of the 413 Highway project under the Impact Assessment Act is warranted given that the Ontario government: 1) has inadequate legislative, regulatory and Highway planning measures in place adequate to protect key Federal interests (e.g. species at risk and possible impacts on indigenous people) and, 2) the province is pursuing a preferred project route that is the most damaging to federal interests, including both aquatic and land-based species at risk.

ABOUT ENVIRONMENTAL DEFENCE

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