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4. Permits and Approvals

4.1 Federal Permits, Approvals and Authorizations

The following Sections describe in detail the Federal permits and approvals that will be required to allow the 407 East Transportation Corridor to proceed.

4.1.1 Fisheries Act

The Federal *Fisheries Act* gives the Minister of Fisheries and Oceans the legislative authority to protect fish and fish habitat from destructive activities in marine and inland waters. The *Fisheries Act* sets out some general habitat and pollution protection provisions in Sections 22(1), 22(2), 22(3), 32, 35(2), 36(3) and 37(2), which are binding on all levels of government and the public in areas such as:

- the provision of sufficient water flows;
- passage of fish around migration barriers;
- screening of intake screens;
- prohibition against the destruction of fish by means other than fishing unless authorized by Fisheries and Oceans Canada;
- restrictions on fishing near a barrier;
- prohibition to deposit deleterious substances unless by regulation; and
- the prohibition against the harmful alteration, disruption or destruction (HADD) of fish habitat unless authorized by Fisheries and Oceans Canada.

The *Fisheries Act* also states that no one is permitted to deposit a deleterious substance into waters containing fish.

The *Fisheries Act* provides for the protection of fish and fish habitat. No one may carry out any work in or near Canadian waters that prevents fish passage, results in fish mortality or results in the harmful alteration, disruption or destruction (HADD) of fish habitat without authorization from Fisheries and Oceans Canada. An authorization for the HADD of fish habitat will likely be required as a result of this Undertaking.

The *Fisheries Act* and the implementation of the 1986 Department of Fisheries and Oceans (DFO) “*Policy for the Management of Fish Habitat*” have strongly influenced the planning and implementation of highway Undertakings in Ontario. In 2006, MTO, DFO and the Ontario Ministry of Natural Resources (OMNR) developed a new protocol and approach to fish habitat management and provincial transportation Undertakings in Ontario.

The *MTO/DFO/OMNR Protocol for Protecting Fish and Fish Habitat on Provincial Transportation Undertakings, 2006*, forms the basis of the new approach. The Protocol covers primarily the fish habitat protection provisions of the *Fisheries Act* and the *Species at Risk Act (SARA)*. The Protocol was developed to ensure that fish and fish habitat receive the appropriate level of consideration and protection while

enabling highway developments to proceed in a timely and cost-effective manner. One of the main features of the *Protocol* is the ability of MTO to determine if harmful alteration, disruption and/or destruction (HADD) of fish and fish habitat is likely to result from a project.

As such, the necessary authorizations shall be obtained by following the *MTO/DFO/OMNR Protocol for Protecting Fish and Fish Habitat on Provincial Transportation Undertakings*, where it has been determined that a HADD of fish habitat is likely to occur from the proposed activities.

Additional information on the MTO/DFO/OMNR Protocol is available on the website www.raqsa.mto.gov.on.ca.

4.1.2 Navigable Waters Protection Act

The *Navigable Waters Protection Act* (NWPA) is a Federal law designed to protect the public right of navigation. The purpose of the Act is to prevent the placing of obstructions (e.g., bridges, dams, wires, and wharves), or dumping of materials, which would interfere with navigation in watercourses. It ensures that works constructed in navigable waterways are reviewed and regulated so as to minimize the overall impact upon navigation. Under the NWPA, navigable water is defined as a “canal and any other body of water created or altered as result of the construction of any works”. In practice, this includes any body of water capable of being navigated by floating vessel of any description for the purposes of transportation, recreation or commerce. The Act includes provisions for the removal of unauthorized works or obstructions that render navigation so difficult it proves to be considered dangerous. The Navigable Waters Protection Program (NWPP) is guided by the NWPA and its regulations are administered by the Minister of Transport. A permit will be required from TC prior to the construction of any such project, in navigable waters.

4.1.3 Consideration of Federal Policies

MTO’s Undertaking was reviewed against the applicable requirements of Federal policies to ensure these were considered in this Environmental Screening. As a result, the following policies were determined to be applicable:

- Policy for the Management of Fish and Fish Habitat;
- Federal Policy on Wetland Conservation;
- The Federal Water Policy; and
- Canadian Biodiversity Strategy.

Policy for the Management of Fish and Fish Habitat

In 1986, DFO implemented the *Policy for the Management of Fish and Fish Habitat*, often referred to as the Habitat Policy, to support the habitat provisions of the *Fisheries Act*. The Habitat Policy’s goals include:

- conservation of existing habitats;
- restoration of damaged habitat; and
- development of new habitats.

The conservation goal requires that the current productive capacity of existing habitats is maintained by applying the “**no net loss**” guiding principle. Under this principle, DFO works with proponents to ensure their development proposals avoid harm to fish habitat. When fish habitat losses are unavoidable, the productive capacity can be compensated by replacing or enhancing fish habitat thereby achieving a “no net loss” of fish and fish habitat. The restoration and development goals build on the conservation goal in order to achieve a “**net gain**” in productive capacity. A “net gain” is achieved when there is more or better functioning fish habitat available such that fish productivity is likely to be improved over existing conditions. DFO works with interested parties to rehabilitate the productive capacity of fish habitats or create new fish habitats in selected areas where economic or social benefits can be achieved through the fisheries resource.

Federal Policy on Wetland Conservation

The *Federal Policy on Wetland Conservation* was adapted in 1991. The objective of this policy is to promote the conservation of Canada’s wetlands to sustain their ecological and socio-economic functions, now and in the future. The policy is a shared Federal responsibility that directs all departments to sustain wetland functions in the delivery of their programs, services or expenditures. The goals of the Policy include the following:

- maintaining the functions and values of wetlands;
- ensuring no net loss of wetland functions on all Federal lands and waters;
- enhancing and rehabilitating wetlands in areas prone to degradation and loss;
- recognizing wetland functions in resource planning and management with regard to Federal programs, policies and activities;
- securing significant wetlands; and
- recognizing and utilizing sustainable management practices to conserve wetlands.

The policy promotes the concepts of co-operative approaches to wetland conservation, the need for linkages between wetlands conservation and other related initiatives (e.g., water policy, wildlife conservation), and the promotion of wetland protection through adequate consideration of wetland concerns in environmental assessments. Wetlands, as identified in the Policy, include bogs, fens, marshes, swamps and shallow waters.

The Federal Water Policy

The *Federal Water Policy* addresses the management of water resources, balancing water uses with the requirements of the many interrelationships within the ecosystem. The policy takes into account the needs of all Canadians in its overall objective to encourage the use of freshwater in an efficient and equitable manner consistent with the social, economic and environmental needs of present and future generations. To manage Canada’s water resources, the Federal government has defined two main goals:

- to protect and enhance the quality of the water resource; and,
- to promote the wise and efficient management and use of water.

Canadian Biodiversity Strategy

Following Canada’s ratification of the United Nations’ *Convention on Biological Diversity* in 1992, the Federal government developed the *Canadian Biodiversity Strategy*. This Strategy provides a framework for action

aimed at promoting the conservation of biodiversity and the sustainable use of Canada's biological resources. The Strategy has five goals, which are:

- to conserve biodiversity and sustainably use biological resources;
- to enhance both our understanding of ecosystems and our resource management capability;
- to promote an understanding of the need to conserve biodiversity and sustainably use biological resources;
- to provide incentives and legislation that support the conservation of biodiversity and the sustainable use of biological resources; and
- to work with other countries to conserve biodiversity, use biological resources sustainably and share equitably the benefits that arise from the utilization of genetic resources.

The Strategy recognizes that the conservation of biodiversity and the sustainable use of biological resources are fundamental to Canada's indigenous communities. It describes mechanisms by which Canada's indigenous communities will be able to develop their own understanding of the United Nations' Convention and respond to it.

4.2 Provincial Permits, Approvals and Agreements

A number of provincial permits, approvals and agreements from the following Ontario government ministries and agencies will be required to allow the Undertaking to proceed:

- Ministry of Environment
- Ministry of Natural Resources
- Ministry of Culture
- GO Transit
- Ontario Realty Corporation
- Hydro One Networks

4.2.1 Ministry of Environment

The Ontario Ministry of Environment (MOE) is an authority from which a number of specific permits and approvals will be required to allow MTO to proceed with the implementation of its Undertaking. Firstly, the Minister of the Environment, with the approval of Cabinet, approves the Provincial EA and allows MTO to implement the Recommended Design and the mitigation measures identified in the Provincial EA documentation. The following permits, approvals and agreements will be required:

- Permit to Take Water (*Ontario Water Resources Act*);
- Various Approvals under the Ontario *Environmental Protection Act*.

Permit to Take Water

Permits to Take Water (PTTW) are issued under Section 34 of the *Ontario Water Resources Act* (OWRA) for temporary water takings that exceed the trigger threshold of 50,000 L/day (or 7.5 l/gpm). The groundwater takings for the Undertaking will be temporary, but may exceed the trigger threshold in some areas of the project. A PTTW application must comply with the requirements of *Ontario Regulation 387/04 of the OWRA, Water Taking*.

Various Approvals under the *Environmental Protection Act*

Approvals will be required under the *Environmental Protection Act* (EPA) for any use of lands previously used for the disposal of waste (two closed landfills will be affected by the Recommended Design (transportation corridor)). As per Section 46 of the EPA, “No use shall be made of land or land covered by water which has been used for the disposal of waste within a period of twenty-five years from the year in which such land ceased to be so used unless the approval of the Minister for the proposed use has been given”.

Approvals will be required under the EPA for properties with existing MOE C of A’s for a waste management system or waste disposal site (three properties with C of A’s will be affected). As per Section 27 *Environmental Protection Act*, “No person shall operate, establish, alter, enlarge, or extend, (A) a waste management system; or (B) a waste disposal site unless a certificate of approval or provisional certificate of approval therefore has been issued by the Director and except in accordance with any conditions set out in such a certificate”.

Record of Site Condition Regulation, *Ontario Regulation 153/04 of the EPA*, details the requirements that property owners must meet in order to file a record of site condition. Although it is not anticipated that the MTO will be filing records of site condition for any property purchases, the regulation will be followed as a guidance document during contaminated site investigations and clean-ups.

Ontario Regulation 347 of the EPA, General: Waste Management, identifies hazardous wastes through a series of listings and tests. Specifically, for this study, the regulation will be applied to determine the disposal options of any contaminated soil identified during contaminated site investigations and clean-ups, i.e. soil is either hazardous or non-hazardous.

4.2.2 Ministry of Natural Resources

It is anticipated that an application for a permit under the *Endangered Species Act* will be made for the disturbance to butternut trees, Redside Dace, Blanding’s Turtle, Golden Warbler, Atlantic Salmon and their habitat. The permitting process through the Ontario Ministry of Natural Resources (OMNR) is still being developed at the time of writing and therefore will need to be clarified through subsequent design phases. OMNR have indicated that a permit for potential effects to each species and/or its habitat may be required. Further, any measures that will remove an existing dam from a waterbody governed by the *Lakes and Rivers Improvement Act*, must receive a permit from OMNR prior to construction / removal. This may apply to pond removal activities where the outlet is considered a dam.

There may also be a requirement to obtain a permit under the *Fish and Wildlife Conservation Act*, in order to move mammals, turtles and birds out of the Right-Of-Way (ROW) during construction.

4.2.3 Ministry of Culture

As the provincial regulatory agency responsible for built heritage, cultural landscapes, and archaeological resources in Ontario, the Archaeology and Heritage Planning Unit of the Ministry of Culture (MCL) assists MTO in meeting the relevant requirements of the *Ontario Heritage Act*. These requirements are detailed in the MTO document entitled, *Environmental Protection Requirements for Transportation Planning and Highway Design, Construction, Operation and Maintenance* (October 2006), specifically, *Section 9: Built Heritage and Cultural Heritage Landscapes* and *Section 10: Archaeological Resources*.

All archaeological field work undertaken to satisfy the conservation requirements tied to the Provincial EA process must be conducted by an archaeologist holding a valid archaeological license issued by MCL under the *Ontario Heritage Act*. MCL acts as reviewer of the investigations conducted by licensed archaeologists and develops and implements operational policies, technical standards, and guidelines regulating the practice of archaeological conservation in Ontario. Once archaeological resources that may be disturbed by highway design investigations, construction, operation or maintenance have been identified and conserved to the satisfaction of the MCL, in accordance with the *Ontario Heritage Act*, MCL will provide written notification of concurrence with recommendations and acknowledgement that Provincial concerns for archaeological resources have been met. Receipt of this notification from MCL will fulfil MTO's obligations with respect to archaeological resources under the EA process for the 407 East Transportation Corridor.

Currently, while there is no parallel licensing and review process in place regulating the assessment and conservation of built heritage and cultural landscapes, MCL does routinely participate in the review of all relevant EA documentation and thereby provides comment on whether or not Provincial concerns for heritage resources have been addressed in accordance with the *Ontario Heritage Act*.

4.2.4 GO Transit

MTO will need to reach an agreement with GO Transit for the Lake Ridge Road realignment bridge over the CNR and GO tracks. Since GO is a provincial body, no formal approval is required, but rather a letter in support of the proposed plans is obtained.

4.2.5 Ontario Realty Corporation

Permanent and temporary easement agreements will be required for the portions of Ontario Realty Corporation (ORC) managed lands (such as a hydro corridor). Obtaining these types of easements qualifies as a Category A activity under the *Class Environmental Assessment Process Document for Management Board Secretariat & Ontario Realty Corporation* (2004). As a result, there is no need to complete a separate ORC / Management Board Secretariat (MBS) Class EA. Further, contact and discussions with ORC staff will be undertaken in regard to these easements and the specific ORC approval requirements.

4.2.6 Hydro One Networks

Consent from Hydro One Networks Inc. will be required for the 407 East Transportation Corridor. In addition, approval from Hydro One Networks is required, prior to negotiating the required easements and agreements with ORC. Conditional approval of the 407 East Transportation Corridor may be provided by Hydro One.

4.2.7 Consideration of Provincial Plans and Policies

In addition to requiring the preceding approvals, the 407 East EA was reviewed against the applicable requirement of a number of provincial plans and policies to ensure that these plans and policies were adhered to. A total of six plans and policies were determined to be applicable:

- The Ontario Provincial Policy Statement (2005);
- Places to Grow Act (2005);
- Growth Plan for the Greater Golden Horseshoe (2006);
- The Oak Ridges Moraine Conservation Act and Plan (2001);
- The Greenbelt Act and Plan (2005); and
- Metrolinx Regional Transportation Plan (2008).

Overall, MTO determined that the 407 East EA is consistent with the goals and objectives of the preceding provincial plans and policies insofar as:

1. It has met all applicable criteria in all of the provincial documents to establish the project as a legitimate and appropriate use and activity that is needed to meet the growth and land use needs of both the Province and area municipalities in an effective manner;
2. It has taken or will take all appropriate steps in the planning, design, construction and operation of the project to ensure that negative impacts on stated or implied provincial, municipal and community interests have been kept to a minimum;
3. It has thoroughly examined alternatives to the project and has, where practical, adopted additional enhancement and mitigation measures that will enhance the long-term effectiveness and sustainability of the project;
4. Negative impacts on ecological and hydrological features, functions and processes identified in the provincial plans and other documents have been largely avoided or minimized so that there will be no significant or long-term negative effects on these features, functions or processes; and
5. Where possible, opportunities to improve or enhance ecological or hydrological integrity will be pursued through the planning, design, construction and operation of the 407 East Transportation Corridor by the adoption of appropriate mitigation measures. In addition, MTO has developed an enhancement plan (i.e., Community Value Plan) adjunct to the 407 East EA, which identifies opportunities to provide additional social, ecological and recreational enhancements within the communities affected by this project.

4.3 References

Government of Ontario, 2005:

Provincial Policy Statement. Toronto, ON: Queen's Printer for Ontario.

Government of Ontario, 2005:

Greenbelt Plan. Toronto, ON: Queen's Printer for Ontario.

Government of Ontario, 2006:

Places to Grow – Growth Plan for the Greater Golden Horseshoe. Toronto, ON: Queen's Printer for Ontario.

Greenbelt Act, 2005:

S.O. 2005, Chapter 1

Metrolinx, 2008:

The Big Move: Transforming Transportation in the Greater Toronto and Hamilton Area

Ministry of Transportation, 2006:

Environmental Protection Requirements for Transportation Planning and Highway Design, Construction, Operation and Maintenance

Ontario Realty Corporation, 2004:

Class Environmental Assessment Process Document for Management Board Secretariat & Ontario Realty Corporation

Places to Grow Act, 2005:

S.O. 2005, Chapter 13

The Oak Ridges Moraine Conservation Act and Plan, 2001:

S.O. 2001, CHAPTER 31