

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Sched. B), as amended (the “Act”);

AND IN THE MATTER OF an Motion by Imperial Oil Limited to review and vary a order made under sections 90(1) and 97 of the Act granting Leave to Construct of a hydrocarbon distribution pipeline and ancillary facilities to serve the Greater Toronto and Hamilton Area.

**ARGUMENT-IN-CHIEF OF
IMPERIAL OIL LIMITED**

November 23, 2020

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I. OVERVIEW

1. Imperial Oil Limited (“**Imperial**”) makes these submissions in support of its motion to the Ontario Energy Board (the “**OEB**” or the “**Board**”) to review and vary the Decision and Order of the Board in EB-2019-0007 (the “**LTC Proceeding**”) dated March 12, 2020 (the “**LTC Decision**”).¹
2. In the LTC Decision, the Board concluded that an order granting leave to replace an important segment of Imperial’s Sarnia Products Pipeline (the “**SPPL**”) and to construct approximately 63 kilometres of pipeline and associated infrastructure to transport refined oil products from its facility in the City of Hamilton to its facility in the City of Toronto (the “**Project**”) was in the public interest.²
3. Imperial now seeks an Order of the Board to vary the LTC Decision, specifically, to vary the approved Project route (the “**Original Route**”) in the manner detailed in Appendix “**A**” attached hereto (the “**Realignment**”). As described in greater detail below, the Realignment is the only feasible routing option for the Project.
4. Imperial submits that it has demonstrated that there is a need for the Realignment and has provided the OEB with sufficient information regarding the Realignment’s environmental impacts, impacts on landowners, and Indigenous consultation in respect of the Realignment such that the Board should, accordingly, grant an order varying the LTC Decision to reflect the Realignment. OEB Staff have not proposed any additional conditions which should be imposed in respect of the Realignment. Imperial submits that the existing conditions as set out in the LTC Decision are appropriate and that no additional conditions are required in respect of the Realignment.
5. For the reasons set out below, Imperial submits that the Realignment is in the public interest, is the only feasible option, and should be approved.

II. ARGUMENT

A. Background

6. On February 25, 2019, Imperial applied to the OEB under sections 90(1) and 97 of the Act for leave to construct approximately 63 kilometres of pipeline and associated infrastructure to transport refined fuel products from its Waterdown pump station in the City of Hamilton to its Finch terminal facility in the City of Toronto and for approval of the forms of agreement related to the construction of the proposed pipeline.³

¹ EB-2019-0007, [Decision and Order](#), dated March 12, 2020 [LTC Decision].

² LTC Decision at p 1.

³ EB-2019-0007, [Application and Evidence](#), dated February 25, 2019.

7. On March 12, 2020, the OEB issued the LTC Decision, in which it found that the Project was in the public interest and granted Imperial leave to construct the Project, subject to certain conditions, including the requirement that:

Imperial Oil shall advise the OEB of any proposed change to the OEB approved construction or restoration procedures. Except in an emergency, Imperial shall not make any such change without prior notice to, and written approval of the OEB. In the event of an emergency, the OEB shall be informed immediately after the fact.⁴
8. On June 30, 2020 Imperial filed a request (the “**Change Request**”) for an approval of three changes to the Original Route.⁵ The review of the Change Request was undertaken by an OEB staff member delegated authority by the OEB (the “**Delegated Authority**”), who, on August 19, 2020 concluded that two of the proposed changes were not material and approved those changes (the “**Materiality Decision**”).⁶ The Materiality Decision concluded that the third change (i.e., the Realignment) appeared to be a material change and that the Delegated Authority, therefore, did not have the authority to approve the Realignment.⁷
9. On September 2, 2020 the OEB commenced this proceeding by issuing Notice and Procedural Order No. 1 (“**Procedural Order 1**”),⁸ which Imperial served on all parties identified in Procedural Order 1.⁹
10. In September 2020, the City of Toronto (“**Toronto**”) and 112308 Ontario Inc. and 2394561 Ontario Inc. (“**Abell Properties**”) applied for and were approved as intervenors in this proceeding pursuant to Rule 22 of the OEB *Rules of Practice and Procedures*.¹⁰
11. In accordance with Notice and Procedural Order No. 3,¹¹ OEB Staff, Toronto and Abell Properties posed interrogatories to Imperial, to which Imperial responded on November

⁴ LTC Decision at Schedule B, condition 6.

⁵ EB-2019-0007, [Notification of Updates to Project Routing](#), dated June 30, 2020.

⁶ EB-2019-0007, [Request for Changes of Project Routing Decision](#), dated August 19, 2020 at pp 5, 11 [Materiality Decision].

⁷ Materiality Decision at p 9.

⁸ EB-2020-0219, [Notice and Procedural Order No. 1](#), dated September 2, 2020.

⁹ EB-2020-0219, [Affidavit of Service](#), dated September 14, 2020.

¹⁰ Ontario Energy Board, [Rules of Practice and Procedure](#), r. 22.03 [Rules].

¹¹ EB-2020-0219, [Notice and Procedural Order No. 3](#), dated October 16, 2020.

16, 2020.¹² OEB Staff and Toronto also posed interrogatories to Abell Properties, to which Abell Properties responded on November 16, 2020.¹³

B. The Need for the Realignment

(i) There are no Feasible Alternatives to the Realignment

12. Following approval of the Original Route in the LTC Decision, the Ministry of Transportation (“**MTO**”) requested that Imperial move the Original Route outside of the MTO right-of-way to allow for the future expansion of Highway 401 (the “**MTO Requirement**”).¹⁴ In addition to the MTO Requirement, Imperial is also subject to the requirement of Hydro One Networks Inc. (“**HONI**”) that the Project’s route not impact an existing HONI substation, as such lands need to remain unencumbered for future expansion (the “**HONI Requirement**”).¹⁵
13. In response to the HONI Requirement and the MTO Requirement, Imperial assessed three routing options in the subject area:
 - (a) The Original Route, identified in green in Appendix A hereto. As the Original Route was rejected by MTO because it would not allow for future expansions of Highway 401, Imperial determined that the Original Route was not feasible;
 - (b) A revised route located on the east side of Highway 401 (the “**East Route**”), identified in yellow in Appendix A hereto. As the East Route would result in increased impacts to residential neighbourhoods, Imperial determined that the East Route was not feasible; and
 - (c) The Realignment route, located on the west side of the HONI substation and identified in purple in Appendix A hereto. As the Realignment route minimizes impact to residential landowners, while being compliant with the HONI Requirement and the MTO Requirement, Imperial determined that the Realignment was the only feasible route for the Project.
14. The length of the Realignment is approximately 1850 metres, as compared to the previous alignment length of approximately 1370 metres.¹⁶ The current expected start for the Realignment section is late spring 2021 with completion by year end 2021.¹⁷

¹² EB-2020-0219, [Interrogatory Response from Applicant](#), dated November 16, 2020 [Imperial IRR].

¹³ EB-2020-0219, [Interrogatory Response from Intervenor](#), dated November 16, 2020 [Abell IRR].

¹⁴ EB-2020-0219, [Motion and Evidence of the Applicant](#), dated September 25, 2020 at p 1 [Motion and Evidence].

¹⁵ Motion and Evidence at p 1.

¹⁶ Motion and Evidence at p 1.

¹⁷ Imperial IRR at OEB-1(b).

(ii) It is proper for the OEB to Rely on the TSSA and other Regulatory Experts' Assessment of Pipeline Safety and Appropriate Procedures

15. Like all parties, Imperial is committed to ensuring the Project is built and operated safely in order to avoid adverse impacts on people and the environment. To do so, Imperial works diligently with the Technical Standards and Safety Authority (“TSSA”) and other technical and regulatory experts to ensure that all applicable safety and technical standards are met.
16. Abell Properties has submitted that, given Gardex Chemicals Ltd’s (“Gardex”), use of the property, there are “unique fire safety risks to the proponent and the public at large associated with including additional pipeline infrastructure on our client’s property”.¹⁸ In response to interrogatories posed by OEB Staff, Abell Properties advised that “[i]n order to understand the risks associated with the pipeline infrastructure, the staff of Gardex Chemicals Ltd. have had regular discussions with the local area fire chief’s staff and commanders for their guidance and recommendations.”¹⁹
17. Imperial has responded to the unique concerns of Abell Properties, including by accommodating Abell Properties’ request that a valve be relocated off the subject property.²⁰ Since July, 2020, Imperial has requested additional information from Abell Properties to understand if there are additional concerns and has made requests to meet with the landowner and their tenants to determine appropriate mitigation measures, discuss the agreements, the construction process, and any potential questions.²¹
18. Furthermore, as detailed in Imperial’s *Specific Contingency Plan: Fire – Pipeline* (as filed in the LTC Application), in the event of a fire, a “Disciplined Approach (ERP-04-05)” is implemented, in consultation with Imperial fire marshalls and the applicable municipal fire department as follows:
 - Use defensive approach only, i.e. cool adjacent facilities
 - Develop an offensive approach with foam in order to extinguish the fire,
or
 - Let burn and protect area/Site’s neighbourhood.²²
19. It is not clear to Imperial how such procedures are incompatible with the site-specific procedures identified by Abell Properties.

¹⁸ EB-2020-0219, [Intervenor Evidence](#), dated October 29, 2020 at para 3 [Intervenor Evidence].

¹⁹ Abell IRR at OEB-1(a).

²⁰ Imperial IRR at OEB-3, OEB-5(b).

²¹ Imperial IRR at OEB-5(b).

²² EB-2019-0007, [Interrogatory Response from Applicant – Appendices 1 – 16](#), dated August 6, 2019 at Appendix 2, p 3.

20. In any case, in Imperial's submission, it is proper for the Board to defer to the TSSA and other regulatory and technical authorities, including local fire authorities, which, as indicated by Abell Properties, are already in the process of considering appropriate measures in response to the use of the subject property by Gardex.²³ Furthermore, the Project pipeline has been designed in compliance with TSSA requirements and the Canadian Standards Association's *Oil and Gas Pipeline Systems Code Z662-15*, which establishes the safety aspects of pipeline design, including minimum depth of cover requirements.²⁴
21. The Board has in previous proceedings held that it will defer to regulatory agencies that have direct responsibility for applicable technical standards.²⁵ In its assessment of the public interest, the OEB does not assume the role of other regulatory agencies in assessing the merits of whether a given project meets complex technical licensing or other requirements. The Board has recognized that the standard conditions on a leave to construct approval ensure that the requirements of other approvals, permits, licenses and certificates are fully addressed.²⁶ Imperial is already subject to such conditions by virtue of the LTC Decision.

(iii) The Realignment is in the Public Interest

22. In summary, the objective of the Realignment is to comply with the MTO Requirement and the HONI Requirement while maintaining the proposed pipeline within the utility corridor as much as is practicable and limiting impacts to residential neighborhoods. Given that the Board found in the LTC Decision that the Project was in the public interest, and the Realignment is required in order to complete the Project while complying with landowner requirements, Imperial submits that the Realignment is in the public interest, and should be approved.

C. Realignment Costs and Economics

23. Imperial is a non-rate regulated, non-public entity. The cost of the Project and the Realignment will be borne by Imperial. As such, Imperial submits that costs associated with the Realignment are not relevant to the public interest determination by the OEB in this instance.

D. Environmental Impacts

24. The area of the Realignment was considered in the Local Study Area of the environmental report prepared by ERM Consultants Canada Ltd. (the "**Environmental Report**"), which

²³ Intervenor IRR at OEB-1(a).

²⁴ Imperial IRR at Abell-3(a)–(c).

²⁵ EB-2010-0302, [Decision and Order](#), dated March 21, 2011 at p 11; EB-2012-0226, [Decision and Order](#), dated March 28, 2013 at p 7.

²⁶ See EB-2018-0263, [Decision and Order](#), dated July 11, 2019 at p 13.

was submitted to the Board by Imperial in the LTC Proceeding.²⁷ Due to the change in the construction footprint associated with the Realignment, and given that species at risk, ecological land classification and aquatic features were field verified in surveys completed in 2018 and 2019 along the proposed construction footprint only, supplemental field surveys were completed within the new construction footprint (easement and temporary workspace) on June 4, 2020.²⁸

25. These surveys and the original findings in the Environmental Report resulted in no newly identified potential environmental impacts resulting from the Realignment as compared with the Project route approved by the Board in the LTC Decision.²⁹
26. In response to interrogatories received by Toronto and by OEB Staff, Imperial has confirmed that the Arborist Report and Tree Removal Plan reflecting the Realignment have been approved by Toronto,³⁰ that the Realignment will not require any additional watercourse or wetland crossings,³¹ and has provided details on the findings of the field surveys.³²
27. Given the Board's conclusion in the LTC Decision that "[t]he OEB is satisfied that the environmental impacts of the Project have been adequately mitigated" and that "Imperial Oil has followed an extensive process which meets the expectations of the OEB's Environmental Guidelines", and that no additional environmental impacts arise from the Realignment as compared to the Original Route, Imperial submits that the Board should find that Imperial has satisfactorily addressed all environmental issues.³³

E. Impacts on Landowners

28. The Realignment is designed to minimize the number of impacted landowners and reduce impacts to landowners while complying with the HONI Requirement and the MTO Requirement. If approved, the Realignment will impact 16 landowners (the "**Landowners**"), five of whom were not previously impacted by the Original Route.³⁴
29. All Landowners were notified of the Realignment and negotiations with Landowners have been ongoing since in or about March 2020. Imperial is continuing to work with

²⁷ EB-2019-0007, [Environmental Report](#), dated February 25, 2019.

²⁸ Motion and Evidence at p 2.

²⁹ Motion and Evidence at p 2;

³⁰ Imperial IRR at OEB-2(a)

³¹ Imperial IRR at Toronto-3

³² Imperial IRR at Toronto-4.

³³ LTC Decision at p 14.

³⁴ Motion and Evidence at p 3, 5.

Landowners to address their respective concerns and has proposed a variety of mitigation measures, including:³⁵

- (a) Realignment of pipeline easements along property lines to address future development concerns;
 - (b) Meeting or offering to meet with tenants to ensure access restrictions to their leased areas are minimized;
 - (c) Offering to work with tenants during the course of construction to notify them if there will be access restrictions, to minimize impacts to the tenants' schedule and operations and, where possible, to adjust the construction schedule to limit impacts; to tenants; and
 - (d) Ensuring the valve is placed and designed in a manner to address Landowner concerns.
30. Imperial will continue to work with landowners to minimize impacts and to mitigate any additional concerns that arise.³⁶
31. Communication between Imperial's representatives, Landowners and tenants is ongoing, with Imperial and its agents reaching out to Landowners with whom negotiations have not been finalized on a regular basis. Each such landowner has been assigned a dedicated land agent who is and will be continuing negotiations to come to mutually agreeable terms.³⁷
32. Imperial has presented each of the OEB-approved forms of agreements to the Landowners.³⁸ In Imperial's submission, the terms of such agreements, including but not limited to financial terms and/or indemnities, are not properly before the Board in this matter. As the Board has previously held, "[t]he Board determines the appropriate subject-matter of the form of an agreement to be offered to an Ontario landowner, as well as the technical format of the document but not the substance of the agreements, which are left to the landowner and the pipeline company to negotiate".³⁹ As the Board approved the forms of agreement in the LTC Decision, the "substance" of those agreements is a matter solely between the Landowners and Imperial.
33. In summary, given that the Realignment is specifically designed to minimize landowner impacts while accepting the MTO Requirement and the HONI Requirement, and that

³⁵ Motion and Evidence at p 6.

³⁶ Motion and Evidence at p 6.

³⁷ Motion and Evidence at p 6.

³⁸ Motion and Evidence at p 6.

³⁹ EB-2013-0074, [Decision and Order](#) (30 January 2014), pp. 16 – 17.

Imperial has developed responsive mitigation measure to address landowner concerns, Imperial submits that the Realignment is in the public interest, and should be approved.

F. Indigenous Consultation

34. On June 25, 2020, Imperial provided notification of the Realignment to each of the Indigenous communities identified by the Ministry of Energy, Northern Development and Mines (“**MENDM**”) in its letter dated September 10, 2018 in which the MENDM delegated the Crown’s procedural aspects of consultation in respect of the Project to Imperial.⁴⁰
35. As there have been no concerns raised by any Indigenous communities in respect of the Realignment,⁴¹ and as Imperial continues to consult with Indigenous communities, Imperial submits that the Board should find that the Realignment is in the public interest and should be approved.

G. Conditions of Approval

36. OEB Staff has not proposed any additional conditions which should be imposed in respect of the Realignment. Imperial submits that the existing conditions as set out in the LTC Decision are appropriate and that no additional conditions are required in respect of the Realignment.

III. CONCLUSION

37. The Realignment is the only feasible route for the Project, a proactive and prudent replacement of the existing SPPL to ensure the continued safe, reliable, and environmentally responsible transportation of products throughout the Greater Toronto and Hamilton region for decades to come, which the Board has found is in the public interest.
38. Imperial submits that, not only is there need for the Realignment, the Realignment has been design in a manner that will:
- (a) not result in any additional environmental impacts as compared with the Original Route approved by the Board in the LTC Decision; and
 - (b) reduce impacts to landowners while complying with the MTO Requirement and the HONI Requirement.
39. There have been no concerns raised by any Indigenous community in respect of the Realignment.

⁴⁰ Motion and Evidence at pp 8 – 9; EB-2019-007, [Delegation Letter](#), dated September 10, 2018.

⁴¹ Motion and Evidence at p 9.

40. The Realignment is required in order for Imperial to proceed with the Project, which the LTC Decision found to be in the public interest. Imperial submits that, in light of these factors, the Realignment is in the public interest and should be approved by the Board on this motion.

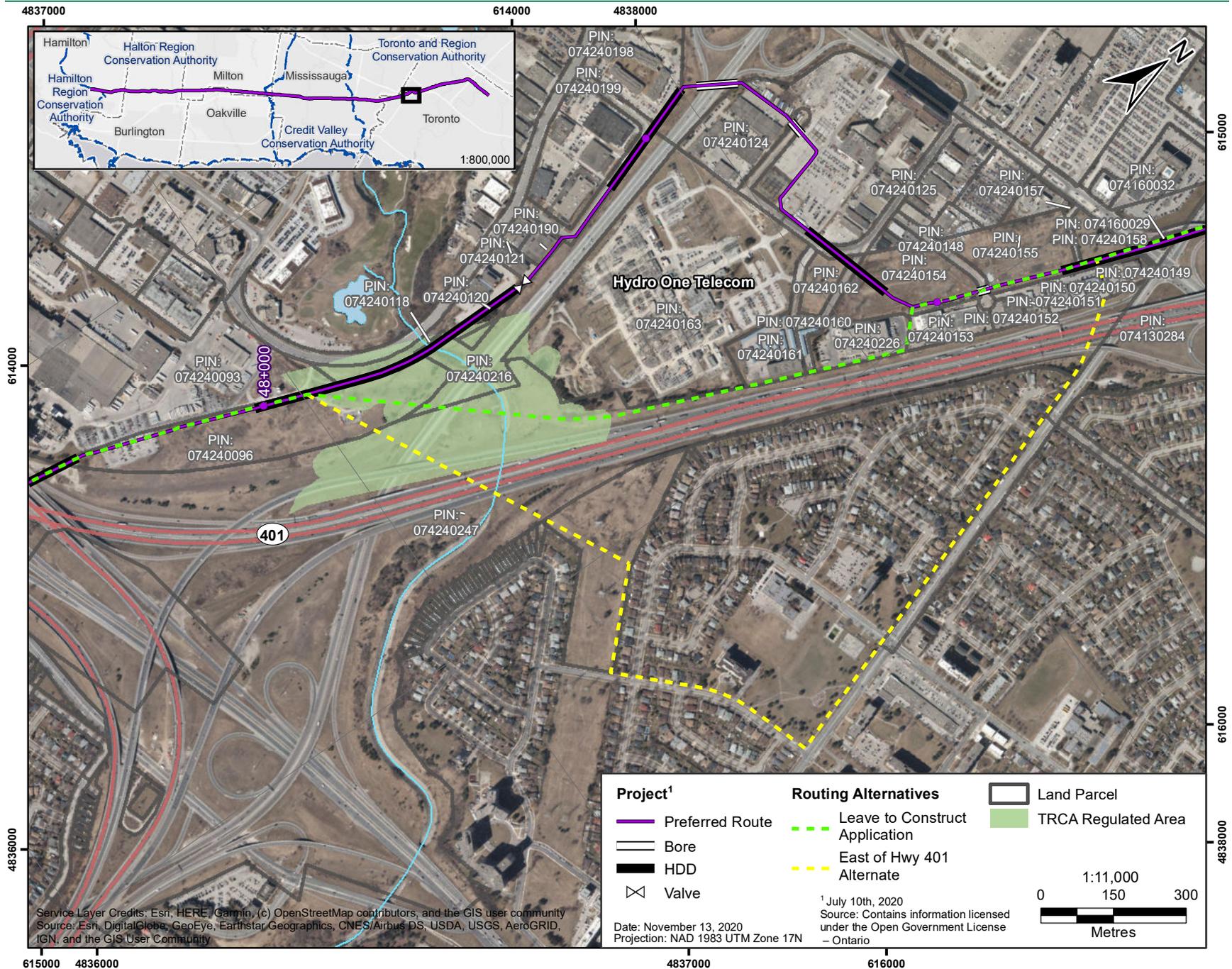
ALL OF WHICH IS RESPECTFULLY SUBMITTED.

November 23, 2020



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Appendix A



OEB-1: Highway 401/Highway 27 Crossing Realignment