



Ontario Energy Board | Commission de l'énergie de l'Ontario

BY EMAIL

November 30, 2020

Ms. Christine Long
Registrar Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4
registrar@oeb.ca

Dear Ms. Long:

**Re: Ontario Energy Board (OEB) Staff Submission
Imperial Oil Limited Waterdown to Finch Project
Motion to Review and Vary Decision
Ontario Energy Board File Number: EB-2020-0219**

In accordance with Procedural Order No. 3, please find attached the OEB staff submission in the above proceeding. The attached document has been forwarded to Imperial Oil Limited and to all other registered parties to this proceeding.

Yours truly,

Original Signed By

Zora Crnojacki
Project Advisor, Natural Gas Applications

Encl.



ONTARIO ENERGY BOARD

OEB Staff Submission

EB-2020-0219

November 30, 2020

Introduction

Leave to Construct Approval

The Ontario Energy Board (OEB) granted Imperial Oil Limited (Imperial Oil) under section 90(1) of the *Ontario Energy Board Act, 1998* (OEB Act) leave to construct (LTC) 63 kilometers of 12-inch diameter pipeline for transportation of refined petroleum products from its facility in the City of Hamilton to its facility in the City of Toronto (Waterdown to Finch Project or Project). The Project will replace an older existing pipeline that is reaching the end of its serviceable life. The OEB's approval was granted in a decision and order dated March 12, 2020 (Original Decision), subject to a number of conditions (Conditions of Approval).¹ The OEB also approved the forms of easement agreements that Imperial Oil will offer, or has offered, to directly affected landowners related to the construction of the Project.

The Original Decision, among other things, approved the route of the Project (OEB-approved Route). A map of the route for the Project is included in Schedule A.

The OEB-approved Route closely follows the route of the existing Imperial Oil pipeline, and is located in the City of Hamilton, the City of Burlington, the Town of Milton, the Town of Oakville, the City of Mississauga and the City of Toronto. The City of Burlington, the Town of Milton and the Town of Oakville are in the Region of Halton. The City of Mississauga is in the Region of Peel.

Imperial Oil Motion: Route Realignment Approval Request

On June 30, 2020, Imperial Oil filed a request for an approval of three changes to the OEB-approved Route. The review of these requests was undertaken by Delegated Authority (DA)². On August 19, 2020 the DA approved two of the proposed changes, but was not satisfied that the third proposed change was immaterial. The third change requested an adjustment of the Pipeline route crossing of Highway 27 in the City of Toronto (Route Realignment).

The DA stated that the OEB would treat the request for approval of the Route Realignment as a Motion to Review and Vary the Original Decision (Imperial Oil's

¹ Decision and Order (EB-2019-0007), dated March 12, 2020, including Conditions of Approval as Schedule "B".

² The authority of the OEB to determine whether proposed changes will result in material changes to a project for which a leave to construct was granted and the authority to approve any changes that they conclude are not material has been delegated to the Manager, Generation and Transmission Applications, under section 6 of the *Ontario Energy Board Act, 1998*.

Motion).³ These are OEB staff's final submissions on the Imperial Oil Motion.

The proposed Route Realignment will cross Highway 27 approximately 800 metres north of the OEB-approved Route. The length of the segment of the Route Realignment is approximately 1,850 metres. The length of the OEB-approved Route segment subject to the requested realignment is approximately 1,370 metres. Imperial Oil submitted that the need for the Route Realignment is due to the Ministry of Transportation (MTO) request to move Imperial Oil's pipeline outside of the MTO's right of way in this location to allow for future expansions of Highway 401 and by the requirement of Hydro One Networks Inc. (HONI) to accommodate future expansion of an existing substation.

A map of the Route Realignment and alternatives that Imperial Oil assessed is attached in Schedule B.

Imperial Oil Motion Proceeding

On September 2, 2020, the OEB commenced Imperial Oil's Motion proceeding by issuing a Notice and Procedural Order No. 1 (Notice and PO No. 1). The OEB directed Imperial Oil to serve Notice and PO No. 1 on all landowners directly affected by the Route Realignment, the Huron Wendat Nation and the City of Toronto.

Each of the City of Toronto and 112308 Ontario Inc. and 2394561 Ontario Inc. (Abell Properties) applied and were granted intervenor status.

The OEB noted in Notice and PO No. 1 that the scope of the proceeding does not include determining financial compensation from Imperial Oil to the landowners directly impacted by the Route Realignment⁴.

On September 25, 2020 Imperial Oil filed additional evidence.

On October 15, 2020, Abell Properties filed a letter requesting to file evidence and describing the areas the evidence will cover. On October 16, 2020, the OEB set the schedule for Abell Properties' evidence filing, for written discovery on both Abell Properties' evidence and Imperial Oil's evidence, and for written submissions by the parties. Abell Properties filed its evidence on October 29, 2020. Written interrogatories on Imperial Oil's evidence and Abell Properties' evidence were filed on November 9, 2020. Imperial Oil and Abell Properties filed responses to the interrogatories on November 16,

³ OEB Letter-Decision on Imperial Oil Limited Request for Changes of Project Routing (EB-2019-0007), August 19, 2020, page 9.

⁴ To the extent that the OEB approves the Route Realignment and the parties cannot agree on appropriate compensation, compensation is ultimately determined by the Local Planning Appeal Tribunal pursuant to the *Expropriations Act*.

2020, and Imperial Oil filed its Argument in Chief on November 23, 2020. In accordance with the procedural schedule, OEB Staff is filing this written submission, and Imperial Oil may file a written reply submission to OEB Staff and any intervenor submissions by December 7, 2020.

OEB Staff Submission Summary

The OEB staff submission will address the issues set by the OEB⁵ as being within the scope of Imperial Oil's Motion proceeding:

- The need for the Route Realignment and alternatives to the proposal
- Environmental matters related to the Route Realignment
- Land matters related to the Route Realignment
- Indigenous consultation matters related to the Route Realignment

The OEB staff Submission will address safety and emergency response issues and concerns raised by Abell Properties and the City of Toronto below in a separate section of this submission.

OEB staff has no concerns with the Route Realignment as filed by Imperial Oil. OEB Staff submits that the Route Realignment should be approved, subject to the same conditions that the OEB imposed to its approval of the Project in the Original Decision. A copy of these conditions is attached as Schedule C.

Need for Route Realignment and Alternatives

Imperial Oil stated that the realignment of the OEB-approved Route is needed to comply with the request of the MTO to move the pipeline outside of its right of way to allow future highway expansion, as well as the requirement that HONI be able to accommodate future expansion of an existing substation. Imperial Oil considered two alternatives to the proposed realignment:

- i) the OEB approved Route within the MTO lands, which was rejected as it is no longer feasible due to routing constraints
- ii) a route located on the east side of Highway 401, which was rejected because it results in increased impacts on residential landowners

In Imperial Oil's submission, the proposed realignment, located on the west side of the HONI substation, results in less impact on residential landowners and avoids the MTO's

⁵ Notice and Procedural Order No. 1, EB-2020-0219, September 2, 2020

and HONI's constraints.

OEB Staff Submission

OEB staff's view is that there is a demonstrated need for the Route Realignment and that the proposed route is the best option compared to the alternatives considered by Imperial Oil. There does not appear to be any other feasible route for the realignment.

Environmental Matters

Imperial Oil completed additional surveys of the Route Realignment area, including areas of permanent easement and temporary workspace on June 4, 2020. These surveys included tree inventory, wildlife habitat, vegetation, aquatic features and ecological land classification. The survey results did not identify any new potential environmental impacts except the need for removal of 28 additional trees, included in the Arborist Report and Tree Removal Plan (Arborist Report). On March 10, 2020, Imperial Oil submitted the Arborist Report to the City of Toronto departments of Urban Forestry, Tree Protection & Plan Review and Ravine and Natural Feature Protection. The final revised version of the Arborist Report was submitted on November 6, 2020. Imperial Oil stated that the City of Toronto accepted the Arborist Report.⁶

Regarding archaeological potential, portions of the route realignment will require a Stage 2 Archeological Assessment (Stage 2 AA). Imperial Oil stated that the Stage 2 AA of the 1.71 hectares of land with the archaeological potential was completed in September/October 2020. Imperial Oil will complete additional Stage 2 AA work on a 0.02 hectare area in November/December 2020.⁷

The City of Toronto also raised issues related to traffic disruption during construction. On November 4, 2020, Imperial Oil provided a Traffic Accommodation Plan to the City for review.⁸ On September 14, 2020 and October 16, 2020, Imperial Oil provided required drawings for road crossings to the City of Toronto Right-Of-Way (ROW) Management and Engineering Services.

⁶ Imperial Oil's response to OEB Staff interrogatory 2 a)

⁷ Imperial Oil's response to OEB Staff interrogatory 2 b)

⁸ Imperial Oil's response to the City of Toronto interrogatory 9 d)

OEB Staff Submission

In OEB staff's view, Imperial Oil has conducted the necessary additional surveys and developed measures to mitigate the potential environmental impacts of construction and operation of the pipeline in the Route Realignment segment.

OEB staff notes that Imperial Oil has been working collaboratively with the City of Toronto to obtain the necessary permits and to comply with the tree replacement, traffic control and other ROW management requirements.

OEB staff submits that Imperial Oil has conducted and is committed to completing the necessary archeological assessments in the Route Realignment segment.

Land Matters

The Route Realignment directly affects 23 parcels of land and 16 landowners including: i) private landowners and businesses ii) HONI iii) the City of Toronto, and iv) the Ministry of Transportation.

All of these landowners were provided with direct notice of this proceeding and the proposed change of the OEB-approved Route.

Imperial Oil has been negotiating with impacted landowners along the proposed Route Realignment since March 2020. In its Argument in Chief, Imperial Oil confirmed that it is "...continuing to work with Landowners to address their respective concerns and has proposed a variety of mitigation measures..." Examples of mitigation measures that Imperial Oil proposed to address the concerns expressed by the landowners include, realignment of pipeline easements to address future development plans, offering to work with tenants during construction to notify them of access restriction and minimizing impacts on tenants operations, and repairing damages to existing infrastructure including paving, trees, and fencing.⁹

Imperial Oil provided an update on the status of negotiations with the affected landowners, including the anticipated timeline of acquiring the necessary permanent and temporary easement rights from private landowners and HONI, and a road crossing agreements with the City of Toronto.¹⁰ Imperial Oil's anticipated timeline for acquiring the

⁹ Imperial Oil's response to OEB Staff interrogatory 3, Table OEB-3: Landowner Concerns and Mitigations

¹⁰ Imperial Oil's response to OEB Staff interrogatory 4, Table OEB-4 Affected Landowners and Agreement

necessary permanent and temporary land rights and road crossing agreements is between November 2020 and January 2021, except for permanent easement and temporary use and access agreements with HONI, which are expected to be reached by April 2021.

Imperial Oil has notified the OEB that construction of the Project will start on December 1, 2020 at the west end of the route in the City of Hamilton and the City of Burlington.¹¹ The Project is scheduled for completion by early 2022. Construction of the Realignment segment, subject to OEB approval, is expected to start in late spring 2021 with completion by year end 2021.¹²

Imperial Oil confirmed that it has offered the affected landowners agreements in a form approved by the OEB.

Abell Properties raised the issue of access to its property and disruptions to its tenant's operations during construction, inspection and maintenance of the pipeline. Imperial Oil confirmed that during the operation of the pipeline it will work with the landowners and tenants to give advance notice and accommodate landowners access to their property and operations, and to minimize and mitigate disruptions during maintenance and inspection of Imperial Oil's facilities.¹³

OEB Staff Submission

OEB staff notes that Imperial Oil has been actively negotiating with the affected landowners in an effort to obtain the necessary permanent and temporary land rights and road crossing permits. Imperial Oil confirmed that it has offered or will offer to the affected landowners agreements in the form approved by the OEB in the leave to construct proceeding.

Indigenous Consultation

Imperial Oil, on June 25, 2020, notified all of the Indigenous communities identified by the Ministry of Energy, Northern Development and Mines (MENDM) as potentially affected by the Project of the proposed Route Realignment.¹⁴ No comments were received from any

Status

¹¹ Imperial Oil Letter to the OEB, dated November 20, 2020

¹² Imperial Oil's response to OEB Staff interrogatory 1

¹³ Imperial Oil's response to Abell Properties interrogatory 4 a)

¹⁴ Imperial Oil Argument in Chief, November 23, 2020, page 8, paragraph 34

Indigenous group. Imperial Oil has committed to continue to consult with potentially affected Indigenous groups.

OEB Staff Submission

OEB staff submits that Imperial Oil has notified Indigenous communities potentially affected by the Project and that no comments were received by any of these Indigenous communities.

Safety and Emergency Response Issues Raised by Abell Properties and the City of Toronto

Abell Properties raised issues of managing the risks related to the hazardous chemical storage by its tenant Gardex Chemicals Ltd. (Gardex) and of the appropriateness of Imperial Oil's fire safety plans for these lands and operations. In the intervenor evidence, Abell Properties included various documentation of the relevant garden/pesticide industry fire suppression methods policies and protocols from the City of Mississauga Fire Services, the Ministry of Environment and Climate Change, the Ontario Ministry of Labour (Ministry of Labour), as well as documentation related to environmental risks, hazards and fire suppression approaches¹⁵.

One of the main concerns of Abell Properties was a risk associated with the location of a valve and above ground infrastructure on the property. As a result of negotiating and communicating with Abell Properties, Imperial Oil has agreed to relocate the valve outside of the property to an adjacent property. Imperial Oil confirmed this in response to Abell Properties' interrogatories and in its Argument in Chief¹⁶.

Abell Properties raised the issue of "unique safety risks...associated with additional pipeline infrastructure..." on its property. Abell Properties indicated that specialized fire safety plans and emergency response plans need to be in place because of the storage, processing and chemical management activities by Gardex. Abell Properties' evidence noted that the fire safety plans were to be completed in accordance with provincial and national requirements and standards.

OEB staff understands that Abell Properties in its evidence¹⁷ and interrogatories and the City of Toronto in its interrogatories¹⁸ requested that Imperial Oil develop and make it

¹⁵ Letter by Aird Berlis, on behalf of Abell Properties, dated October 15, 2020.

¹⁶ Imperial Oil's response to Abell Properties interrogatory 2 b), Imperial Oil Argument in Chief, page 4, paragraph 17

¹⁷ Abell Properties Evidence, October 29, 2020, page 2, paragraphs 7-8

¹⁸ City of Toronto interrogatory 9 c), d)

available to them appropriate plans and protocols in place to manage fire and spills safety risks in adherence to applicable legal and regulatory standards¹⁹. These plans include specific fire safety plans and response plans for fire and spill emergencies that may arise during construction and operation of the pipeline.

In responding to these issues, Imperial Oil indicated that it filed its *Specific Contingency Plan: Pipeline Fire Document* on the record in the leave to construct proceeding²⁰.

In its Argument in Chief, Imperial Oil confirmed that in the event of fire, it will implement a “Disciplined Approach (ERP-04-04)” in consultation with its fire marshalls and municipal fire departments.²¹ Imperial Oil maintained that “...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.”²²

The City of Toronto and Abell Properties raised concerns of appropriate emergency response plans for emergency action if required. In addressing this concern, Imperial Oil pointed to its *Operational Emergency Response Plan* (ERP), which was on the record in the leave to construct proceeding²³. Imperial Oil indicated that its “... ERP allows for response to a variety of scenarios, including the risk of fire in this area. Given the above and the fact that the proposed pipeline will be located a minimum of 1.2 metres below ground... Imperial’s ERP will account for the route realignment.”²⁴

Imperial Oil states that it has been actively and continuously working with the City of Toronto to respond to information requests and adhere to various municipal requirements. Imperial Oil provided its *Construction Spill Prevention and Response Plan* to the City of Toronto upon request on November 4, 2020.²⁵ On November 6, 2020, Imperial Oil received comments from the City of Toronto regarding potential conflicts with the City’s infrastructure.²⁶

On November 25, 2020 Imperial Oil filed with the OEB an update to the chronology of the communication with the affected stakeholders stating that additional information was submitted to the City of Toronto on November 9, 2020 and that communication with Abell

¹⁹ Abell Properties Evidence, October 29, 2020, page 2, paragraphs 7-8

²⁰ EB-2019-0007 Imperial’s Response to Information Requests, Appendix 2, August 2019

²¹ Imperial Oil Argument in Chief, November 23, 2020, page 4 paragraph 18

²² Imperial Oil Argument in Chief, November 23, 2020, page 5, paragraph referring to Imperial Oil’s response to Abell Properties interrogatory 3 a-c

²³ EB-2019-0007 Imperial’s Response to Information Requests, Appendix 4, August 2019

²⁴ Imperial Oil’s response to the City of Toronto interrogatory 9 a)

²⁵ Imperial Oil’s response to the City of Toronto interrogatory 7

²⁶ Imperial Oil’s response to the City of Toronto interrogatory 7

Properties was ongoing as of November 12, 2020.²⁷

OEB Staff Submission

In its Original Decision, the OEB found that safety and design technical requirements and emergency management requirements are largely under the direct oversight or authority of entities other than the OEB. The OEB found that "...these issues are part of the requirements for other permits and approvals for construction and operation of the proposed pipeline which are addressed by other entities."²⁸ For example, the Original Decision noted that under the *Environmental Protection Act* there are separate requirements with respect to spill prevention, spill reporting, spill management plans, spill amelioration, and related powers of the Minister of the Environment, Conservation and Parks.²⁹

At the same time, the OEB recognized the importance of these issues and ensured that they are addressed. For that reason, the OEB included a condition in the Conditions of Approval that requires Imperial Oil to obtain all other necessary approvals, permits, licences, and certificates required to construct, operate and maintain the Project. This condition reads:

- 2 Imperial Oil shall obtain all necessary approvals, permits, licences, certificates, agreements and rights required to construct, operate and maintain the Project.

The Conditions of Approval include a condition that requires Imperial Oil to notify the OEB and all the parties prior to construction start of completion of the Environmental Protection Plan (EPP), Environmental Management Plan (EMP) and Contingency Plans and make these plans available for review upon request of the parties. This condition reads:

4. Imperial Oil shall notify the OEB and all parties in this proceeding, prior to the start of construction, of completion of each of Environmental Protection Plan (EPP), Environmental Management Plan (EMP), and Contingency Plan documents and make a copy of the documents available to a party upon their request.

²⁷ Imperial Oil's response to OEB Staff interrogatories Appendix 1: Updated Chronology of the Communication Regarding Route Realignment

²⁸ EB-2019-0007 OEB Decision and Order, dated March 12, 2020, page 7

²⁹ EB-2019-0007 OEB Decision and Order, dated March 12, 2020, page 6

OEB staff notes that Imperial Oil has filed on the record the *Operational Emergency Response Plan* and a *Specific Contingency Plan: Pipeline Fire Document* and *Construction Spill Prevention and Response Plan* to the City of Toronto. Imperial Oil confirmed its commitment to continue to work with the municipal authorities and other entities to acquire necessary permits and comply with applicable regulatory and legislative requirements for the Project and for the Route Realignment.

OEB Staff's view is that the Conditions of Approval that the OEB attached to its Original Decision under section 90 of the OEB Act should apply to the entire route of the Project, including the proposed Route Realignment. OEB staff does not believe that any specific additional conditions of approval related to the proposed Route Realignment are warranted because, in OEB staff's view, the Conditions of Approval are comprehensive and cover the issues and concerns raised by the intervenors in this proceeding.

Conclusion

OEB staff has no concerns with the approval for the Route Realignment subject to the Conditions of Approval. OEB staff expects that Imperial Oil will adhere to the OEB's Conditions of Approval for the Project and will ensure safe construction and operation of the Project, addressing site specific impacts and risks along the entire OEB-approved Route of the Project including the Route Realignment segment. OEB staff expects that Imperial Oil will adhere to all current federal, provincial and municipal requirements applicable to the entire Project, including the Route Realignment.

OEB staff is satisfied that Imperial Oil has committed to continue working with Indigenous communities, the impacted landowners, tenants and government authorities during construction and operation of the Project.

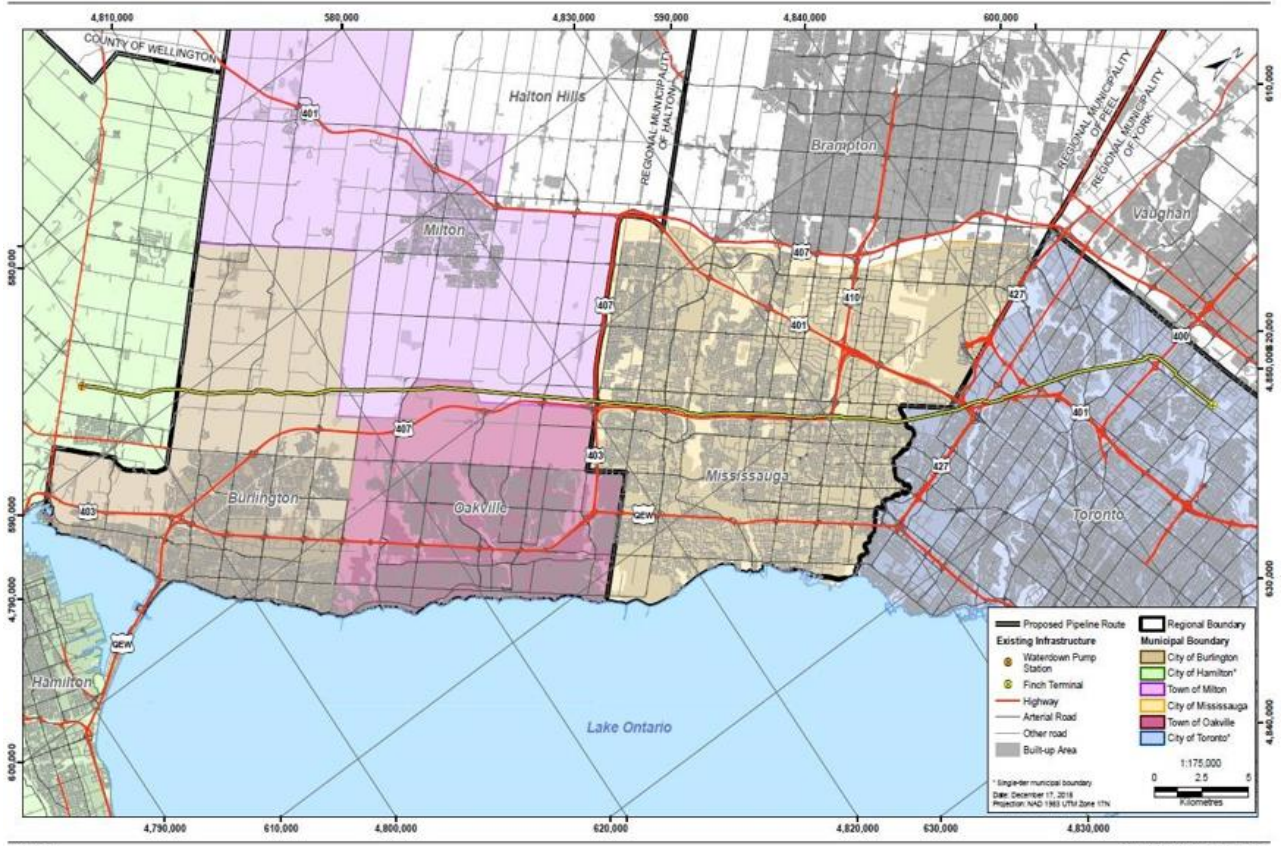
-Respectfully Submitted-

Schedule A

Waterdown to Finch Project Route as approved in EB-2019-0007



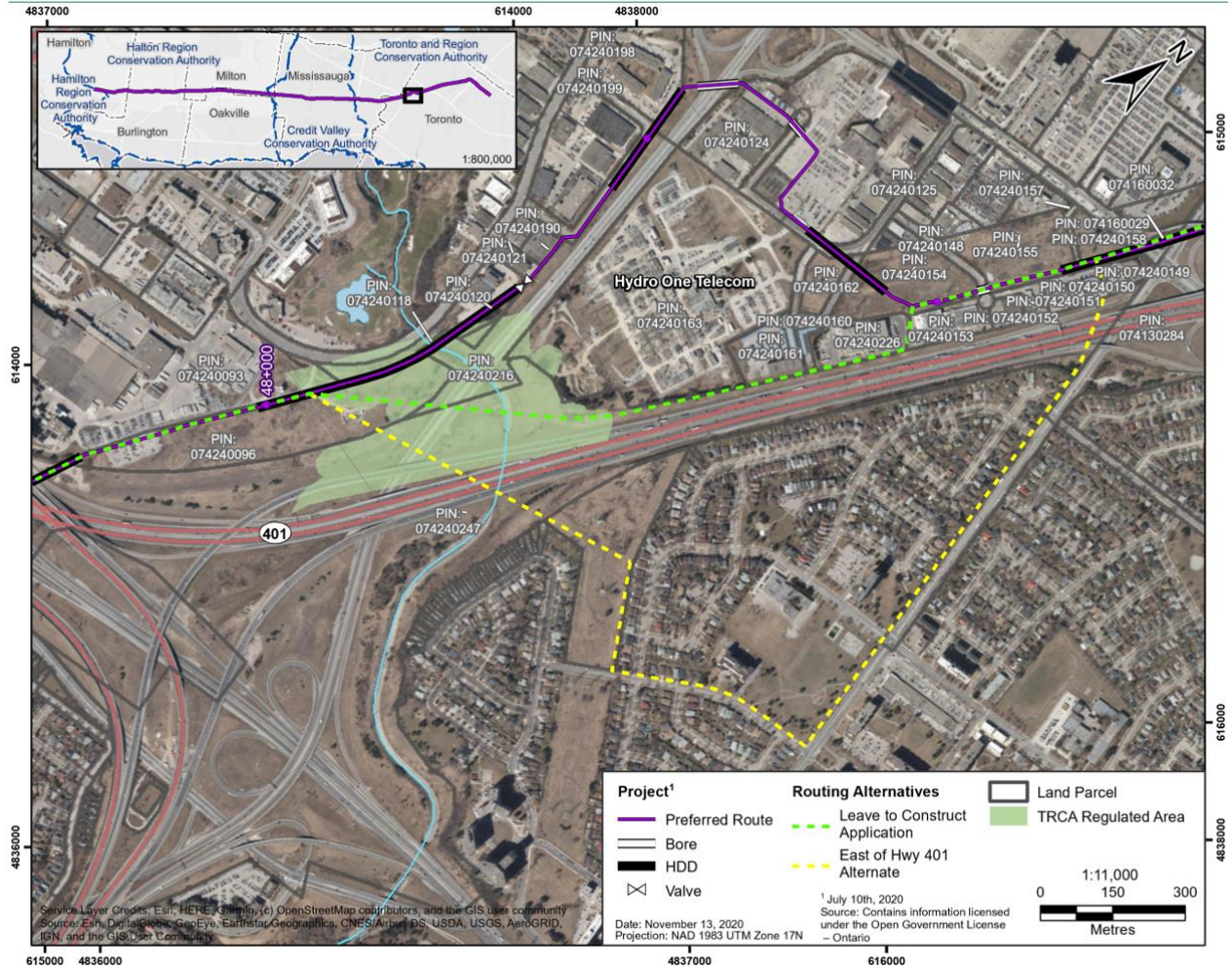
Figure 2.2-1
 Waterdown to Finch Project Overview



Schedule B

EB-2020-0219

Proposed Route Realignment and Alternatives



Schedule C

EB-2020-0219

Proposed Conditions of Approval

CONDITIONS OF APPROVAL

Application under Section 90 of the OEB Act

Imperial Oil Limited

EB-2019-0007

1. Imperial Oil Limited. (Imperial Oil) shall construct the facilities in accordance with the OEB's Decision and Order in EB- 2019-0007 and these Conditions of Approval.
2. Imperial Oil shall obtain all necessary approvals, permits, licences, certificates, agreements and rights required to construct, operate and maintain the Project.
3. Imperial Oil shall implement all the recommendations of the Environmental Report filed in the proceeding, and implement all commitments made in response the Ontario Pipeline Coordinating Committee member review.
4. Imperial Oil shall notify the OEB and all parties in this proceeding, prior to the start of construction, of completion of each of Environmental Protection Plan (EPP) Environmental Management Plan (EMP), and Contingency Plan documents and make a copy of the documents available to a party upon their request.
5. (a) Authorization for leave to construct shall terminate 24 months after the decision is issued, unless construction has commenced prior to that date.

(b) Imperial Oil shall give the OEB notice in writing:
 - i. of the commencement of construction, at least ten days prior to the date construction commences
 - ii. of the planned in-service date, at least ten days prior to the date the facilities go into service
 - iii. of the date on which construction was completed, no later than 10 days following the completion of construction
 - iv. of the in-service date, no later than 10 days after the facilities go into service
6. 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.

7. Both during and after construction, Imperial Oil shall monitor the impacts of construction, and shall file with the OEB one paper copy and one electronic (searchable PDF) version of each of the following reports:
 - a) a post construction report, within three months of the in-service date, which shall:
 - i. Provide a certification, by a senior executive of the company, of Imperial Oil's adherence to Condition 1
 - ii. Describe any impacts and outstanding concerns identified during construction
 - iii. Describe the actions taken or planned to be taken to prevent or mitigate any identified impacts of construction
 - iv. Include a log of all complaints received by Imperial Oil, including the date/time a complaint was received, a description of the complaint, any actions taken to address the complaint, the rationale for taking such actions
 - v. Provide a certification, by a senior executive of the company, that the company has obtained all other approvals, permits, licences, and certificates required to construct, operate and maintain the proposed project
 - b) a final monitoring report, no later than fifteen months after the in-service date, or, where the deadline falls between December 1 and May 31, the following June 1, which shall:
 - i. Provide a certification, by a senior executive of the company, of Imperial Oil' adherence to Condition 3
 - ii. Describe the condition of any rehabilitated land
 - iii. Describe the effectiveness of any actions taken to prevent or mitigate any identified impacts of construction
 - iv. Include the results of analyses and monitoring programs and any recommendations arising therefrom
 - v. Include a log of all complaints received by Imperial Oil, including the date/time the complaint was received, a description of the complaint, any actions taken to address the complaint, the rationale for taking such actions
- 8 Imperial Oil shall designate one of its employees as project manager who will be responsible for the fulfillment of these conditions, and shall provide the employee's name and contact information to the OEB and to all the appropriate stakeholders, and shall clearly post the project manager's contact information in a prominent place at the construction site.

The OEB's designated representative for the purpose of these Conditions of Approval shall be the OEB's Manager of Natural Gas Applications (or the Manager of any OEB successor department that oversees leave to construct applications).

