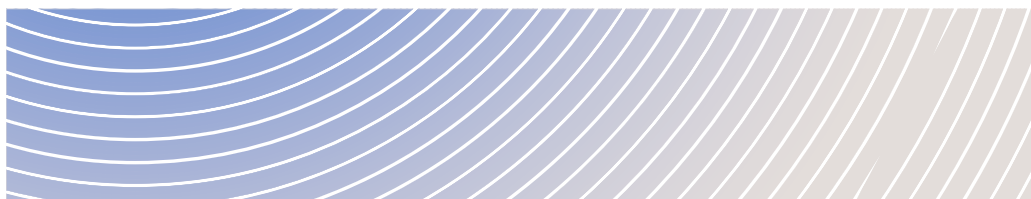




Executive Summary - Crown Consultation and Accommodation Report - Milton Logistics Hub Project



January 21, 2021



Executive Summary

The Impact Assessment Agency of Canada (the Agency), formerly the Canadian Environmental Assessment Agency, has prepared this report to document the consultations undertaken with Indigenous Nations with respect to the Government of Canada's environmental assessment (EA) decisions on the Milton Logistics Hub (the Project), as proposed by CN Railway (the Proponent), including proposed project conditions for potential impacts to potential or established Aboriginal or Treaty rights.

The intention of this report is to summarize the efforts of the Crown in fulfilling the procedural and substantive aspects of the Crown's constitutional duty to consult and, where appropriate, accommodate with respect to the Project to support decision-making under the *Canadian Environmental Assessment Act, 2012* (CEAA 2012).

Consultation Process

The Agency acted as the Crown Consultation Coordinator on behalf of the Government of Canada for the EA of the Project.

In carrying out the preliminary breadth and depth of consultation assessment, the Agency considered the geographic proximity of the Project to areas where potentially affected Indigenous Nations carry out activities related to the current use of lands and resources for traditional purposes, physical/cultural heritage, and the potential environmental effects of the Project on those activities. This assessment also considered available information regarding the identified Indigenous Nations on the strength of claim and the potential for the Project to impact potential or established Aboriginal or Treaty rights and title, as recognized and affirmed by Section 35 of the *Constitution Act, 1982* (Section 35 rights)¹.

The outcomes of the depth of consultation assessment guided the types of consultation activities offered to potentially affected Indigenous Nations, and the consideration of accommodation, where appropriate. The Agency identified a consultation requirement and a depth of consultation for four Nations for the purposes of the EA (see Table 1).

¹ Section 35 of the *Constitution Act, 1982* provides that:

- (1) The existing Aboriginal and Treaty rights of the Aboriginal peoples of Canada are hereby recognized and affirmed.
- (2) In this Act, "Aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

**Table 1: Breadth and Depth of Consultation Assessment Outcomes**

| Indigenous Nation | Depth of Consultation |
|---|------------------------------|
| Mississaugas of the Credit First Nation | High |
| Six Nations of the Grand River | Moderate |
| Huron-Wendat Nation | Moderate |
| Métis Nation of Ontario | Low |

The Agency supported the participation of potentially affected Nations in the EA process by making funding available to all Indigenous Nations identified for consultation. All Indigenous Nations identified in Table I, were invited to apply for, and were allocated funding from, the Agency's Participant Funding Program. A total of \$262,272.90 was allocated to the Indigenous Nations to support their participation in the EA (not including the amounts for Métis Nation of Ontario, who did not apply for nor access their allocated amount of funding).

The Agency provided Indigenous Nations with opportunities to: learn about the Project and its impacts, either through consultation meetings or public comment periods; co-develop a methodology to assess the severity of impacts on rights, evaluate the Project in relation to their potential or established rights and title; communicate their concerns to the Crown; and discuss possible mitigation and accommodation measures, as appropriate.

Methodology for Assessing the Potential Impacts of the Project on the Exercise of Aboriginal or Treaty Rights

Assessing impacts to Aboriginal and Treaty rights requires an understanding of the Aboriginal and Treaty rights of each Indigenous community that may be affected by a project. Aboriginal and Treaty rights are understood to include the ability to maintain a community's culture and traditional way of life. As such, the term "rights" is used in this methodology to include the culture and traditional way of life of the community possessing them. "Impacts to rights" is construed broadly in a manner that is not limited to biophysical effects or residual environmental effects, and intends to better incorporate Indigenous perspectives. The methodology for assessing the potential impacts of the Project on the exercise of Aboriginal or Treaty rights assists the Government of Canada in upholding its legal obligation to consult and ensure that potential impacts on the exercise of Section 35 rights arising from the Project are adequately considered, and accommodated, where appropriate. The Agency offered to co-develop the methodology with the Indigenous Nations, in an effort to ensure that their preferred terminology (e.g.; pathways) and thresholds (e.g.: criteria) were integrated.

Panel Findings and Conclusions on Areas of Interest to Indigenous Nations

For most of the effects and factors considered in the EA, the Panel concluded that, with the mitigation proposed by the proponent and, in some cases, with additional mitigation



recommended by the Panel, the Project would not have significant adverse environment effects. However, the Panel concluded that the Project is likely to cause significant adverse environmental effects on air quality and on human health as it relates to air quality, and significant adverse cumulative environment effects on air quality, human health, wildlife habitat, and the availability of agricultural land.

The Panel emphasizes that in each case, direct Project effects are relatively small but would be added to an environment where air quality, wildlife habitat and the available agricultural land have already been affected by development, and would continue to be affected by a substantial amount of planned future development in the region.

The Panel noted that most of the adverse environmental effects identified by the Panel as significant are likely to occur whether or not the Project proceeds because the lands have been designated for future development.

Assessment of Potential Impacts on Potential or Established Aboriginal or Treaty Rights

The Agency believes that all identified potentially affected Indigenous Nations in the area around the Project site were given sufficient and meaningful opportunities to participate in the federal EA process. The participation of these Nations contributed to the technical review and assessment of impacts on rights undertaken during the EA.

Based on the information currently available on the potential environmental effects of the Project on Indigenous peoples, the Agency is of the view that the Project may have a potential moderate impact on the ability to exercise rights related to culture, and a potential low impact on traditional resources, water, and health and socio-economics conditions. Detailed results of the assessment of potential impacts on potential or established Aboriginal or Treaty rights were completed in collaboration with and have been communicated to all Indigenous Nations for whom such an assessment was done, and their comments incorporated as applicable.

The Agency has considered the concerns identified to date by Indigenous Nations regarding potential impacts on Section 35 rights and has worked with federal authorities to prepare responses to these concerns, including the consideration of appropriate mitigation and other accommodation to the extent possible.

The Agency understands that the Proponent has also worked with Indigenous Nations to address concerns and is working towards agreements with the three Indigenous Nations who participated in the EA.

The Agency considered the concerns and input from Indigenous Nations regarding the impacts of the Project on potential or established Aboriginal rights or title. This included the views of Indigenous Nations on the findings of the Panel Report and on potential project EA conditions. Where possible, the Agency incorporated further information on specific rights assertions and



used this information to update the analysis and conclusions regarding the potential impacts of the Project on potential or established Aboriginal rights or title.

Accommodation

In *Haida Nation v. British Columbia (Minister of Forests)* and *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)* (SCC, 2004), and *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)* (SSC, 2005), the Supreme Court of Canada held that the Crown has a duty to consult and, where appropriate, accommodate when the Crown contemplates conduct that might adversely impact potential or established Aboriginal or Treaty rights.

There are no serious, significant adverse effects on potential or established Aboriginal or Treaty rights associated with the Project.

With the exception of the Six Nations, the Indigenous Nations that participated in the EA have clearly indicated they are confident in the mitigation regime proposed by the proponent, and expressed interest in having these commitments strengthened by Project conditions. General concerns regarding the potential adverse environmental effects of the Project were expressed by the Six Nations in the process.

In an effort to address concerns associated with air quality, an air quality strategy has been proposed as an additional tool above and beyond the conditions on the proponent to mitigate air pollutant emissions, since the Project is proposed in a region of already-stressed air quality, with elevated levels of a number of key air pollutants, impacted by local and transboundary emissions alike. Other concerns have been incorporated in the development of potential Project EA conditions for inclusion in a Decision Statement issued under *CEAA, 2012*. Project EA conditions would reinforce commitments made by the proponent with regard to mitigation, and would suitably respond to all concerns expressed during consultations, and noted in Section 5. Potential Project EA conditions are considered to be appropriate measures in further reducing or eliminating adverse impacts on potential or established Aboriginal or Treaty rights while taking into account broader societal interests.

Conclusion

Based on the analysis of environmental effects of the Project on Indigenous peoples, and the related mitigation measures and Project conditions outlined above, the Agency is satisfied that the potential adverse impacts of the Project on potential or established Aboriginal rights have been adequately identified and appropriately managed, should the Project proceed.