



Impact Assessment
Agency of Canada
Vice-President
Operations

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December 1, 2023

Peter Kirby
Doug Orchard
Henry Rasmussen
<Personal information removed>

Peter Kirby and cosignatories:

Thank you for your letters of July 5, 2022, and June 14, 2023, regarding the Trans-Canada Highway Twinning Project (the Project) proposed by the Ontario Ministry of Transportation (the Proponent). In your July 5, 2022 letter, you requested that the Minister of Environment and Climate Change (the Minister) designate the Project for an impact assessment pursuant to subsection 9(1) of the *Impact Assessment Act*, SC 2019, c 28, s 1 (the IAA). The Impact Assessment Agency of Canada (the Agency) regrets the delay in responding.

A review of whether limitations applied to the authority of the Minister to designate the Project had commenced prior to the Supreme Court of Canada's (SCC) issuance of its decision on the constitutionality of the IAA.

Following the SCC's issuance of its decision, the Government of Canada issued the Statement on the Interim Administration of the IAA Pending Legislative Amendments on October 26, 2023¹ (Interim Statement). The guidance set out in the Interim Statement will be followed until amendments come into force to address the issues in the IAA identified by the SCC.

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¹ <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/statement-interim-administration-impact-assessment-act-pending-legislative-amendments.html>

With respect to designation requests, the Interim Statement provides that no decisions to designate projects will be taken under section 9 of the IAA and that consideration of any new designation requests will only resume, as appropriate, once amended legislation is in force. To this end, no designation decision will be made with respect to the Project under section 9 of the IAA. Consideration of any new designation requests will take place as appropriate, once amended legislation is in force.

The Interim Statement further sets out that where designation of a project under section 9 of the IAA would not have been warranted, that information would be communicated to proponents.

Under subsection 9(7) of the IAA, the Minister could not make a designation if the carrying out of the physical activity has substantially begun, or if a federal authority had exercised a power or performed a duty or function permitting the physical activity to be carried out in whole or in part.

The Agency considered information provided by the Proponent and the Agency's *Guidance for interpreting "substantially begun" under subsection 9(7) and "substantially begin" under subsections 70(1) and 70(3) of the Impact Assessment Act*.

This guidance is available on the Agency's website at: canada.ca/en/impact-assessment-agency/services/policy-guidance/guidance-interpreting-substantially-begun-subsection-9-7-and-substantially-begin-subsections-70-1-70-3.html.

The Proponent has completed or commenced the following activities:

- Between January 4, 2022, to May 17, 2022: Tree clearing began and was completed and included removal of trees and vegetation.
- Between January 10, 2022, to June 30, 2022: Advanced crushing began and was completed, and included blasting and processing of aggregate material.
- Between June 27, 2022, to Fall 2024: Earth excavation, drilling and blasting, rock excavation, earth and rock embankment construction, placement of granular materials as part of the roadbed construction, and culvert installations.

The Agency notes that:

- the physical undertakings that took place, or that are taking place, are directly linked to the Project, and would not have occurred without the Project;
- the physical undertakings that took place, or that are taking place, amount to an essential part of the Project that is long-lasting;
- the physical undertakings have physically affected the landscape at the project area in a substantive manner; and
- the physical undertakings that took place, or that are taking place, occurred over an extended period.

Additionally, the Proponent has allocated significant time and resources to the Project, including substantive engagement with Indigenous groups and the public.

Based on the above facts, I am of the view that the Project had substantially begun prior to the request dated July 5, 2022. Given this, the Project could not have been designated under section 9 of the IAA.

In addition, should the Project not have substantially begun, given the direction in the Interim Statement, no designations decisions would be made at this time.

My correspondence to you will be made available on the Canadian Impact Assessment Registry Internet site (Reference number 85999):
<https://www.ceaa-acee.gc.ca/050/evaluations>.

Amy Sen, A/Director of the Ontario Region Office of the Agency, will be available to meet with you to discuss this communication and respond to any further questions. Should you wish to schedule a meeting please send your request to designationontario@iaac-aeic.gc.ca.

I trust that you will find this information helpful.

Sincerely,

<Originally signed by>

Eric Landry (he/him, il)
Vice-President