

Enclosure: Federal Authority Advice Record – Designation Request under the IAA
Response due by October 18, 2023
 Ontario Place Redevelopment: Spa Complex Project

Department/Agency	Environment and Climate Change Canada (ECCC)
Lead Contact	Denise Fell, Senior Environmental Assessment Officer
Full Address	867 Lakeshore Rd, Burlington, ON, L7S 1A1
Email	denise.fell@ec.gc.ca
Telephone	647-524-1207
Alternate Departmental Contact	Dan McDonell, Acting Manager, Environmental Assessment Section - Ontario

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1. Has your department or agency considered whether it has an interest in the Project; exercised a power or performed a duty or function under any Act of Parliament in relation to the Project; or taken any course of action (including provision of financial assistance) that would allow the Project to proceed in whole or in part?

ECCC has not exercised a power or performed a duty or function under any Act of Parliament in relation to the proposed Ontario Place Redevelopment Project (the Project), nor has ECCC taken any course of action that would allow the Project to proceed in whole or in part.

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2. Is it probable that your department or agency may be required to exercise a power or perform a duty or function related to the Project to enable it to proceed?

Depending on the results of baseline studies, there is the potential that ECCC will be required to exercise a power or perform a duty or function related to the Project to enable it to proceed (e.g., permit pursuant to the *Species at Risk Act* or *Migratory Birds Convention Act*).

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3. If your department or agency will exercise a power or perform a duty or function under any Act of Parliament in relation to the Project, will it involve public and Indigenous consultation?

Should a SARA permit be required, ECCC's consultation activities with Indigenous communities would begin following receipt of a SARA permit application consistent with section 73(5) of the Act.

The need for Indigenous consultation would be evaluated based on the specific nature and location of the activity and the potentially affected species.

Should a SARA permit be required, there is no public consultation during the process of SARA permit issuance. After a permit is issued, the description of the activity and how SARA's preconditions were met is posted on the Species at Risk Public Registry: <https://species-registry.canada.ca/index-en.html#/permits>.

4. Is your department or agency in possession of specialist or expert information or knowledge that may be relevant to any potential adverse effects within federal jurisdiction caused by the Project or adverse direct or incidental effects stemming from the Project?

Specify as appropriate.

ECCC possesses specialist or expert information in the areas listed below, notably with regard to establishing an adequate baseline, assessing potential effects to biophysical valued components within federal jurisdiction, effectiveness of mitigation measures, methods for monitoring and follow up, as well as information regarding federal policies, standards, and regulations.

Within the context of an impact assessment of a federally designated project, ECCC reviews the proponent's characterization of environmental effects, and proposed measures to mitigate these effects, in areas within the department's mandate, including:

Air quality: ambient air quality; sources of emissions; emissions estimation and measurement; atmospheric transport, transformation and dispersion modelling; cumulative effects, mitigation measures and follow-up monitoring.

Greenhouse gas emissions and climate change: estimations of greenhouse gas (GHG) emissions (net and upstream); impact on carbon sinks; GHG mitigation measures and determination of Best Available Technologies/Best Environmental practices (BAT/BEP); credible plan to achieve net-zero GHG emissions by 2050; climate change science to inform evaluation of potential changes to the environment and Project resilience to effects of climate change; climate change policies; and national GHG projections.

Water quality and quantity: surface water quality; contamination sources for surface water and groundwater, including effluent; wastewater; water quality predictions and modelling; seepage and runoff effects; management of contaminated soils or sediments; hydrology (streamflow rates data and modelling, flooding and extreme events management, drainage control, water levels, water balances); geochemistry; cumulative effects and follow-up and monitoring.

Wildlife, species at risk, and habitat: migratory birds, their nests, eggs, and habitat; species at risk, their habitat and critical habitat including recovery strategies and management plans; ecological function of wetlands; and ecotoxicology.

Environmental emergencies: emergency management planning and guidance, including where the release of hazardous substances could affect species at risk and/or migratory birds; atmospheric transport and dispersion modelling of contaminants in air; fate and behaviour; and hydrologic trajectory modelling of contaminants in water.

Climate and meteorology: long-term climate patterns and norms.

For projects that are not designated but are located on federal lands or utilize federal resources, ECCC can provide similar expertise upon request. On lands managed by ECCC or where ECCC must issue a permit or authorization, ECCC can be a Federal Authority and must determine if the carrying out of a project may result significant adverse environmental effects.

5. Has your department or agency had previous contact or involvement with the Proponent or other parties in relation to the Project?

Provide an overview of the information or advice exchanged.

ECCC has had previous contacts with the Proponent and other parties in relation to the Project.

Ministerial Correspondence:

Minister Guilbeault was contacted by a member of the public on July 5, 2023 by email. In the email, the inquirer voiced concerns about the provincial Environmental Assessment conducted for the “Ontario Place Project” in relation to the exclusion of the West Island from the report, and the impacts of the proposed spa on migratory birds and species at risk.

Participation in Aquatic Habitat Toronto Meeting:

ECCC attends monthly meetings of Aquatic Habitat Toronto (AHT). At the July 6, 2023 AHT meeting, representatives from Therme Canada (the Proponent) discussed changes to shoreline works on the West Island of Ontario Place in relation to their Spa Complex Project. During the meeting the Proponent presented information on their plans to enhance the shoreline with creation of fish habitat reefs and changes to the beach substrate, and advised that a shoreline summary report is being prepared. This summary report is expected to include information on permanent and temporary shoreline works and potential effects on aquatic habitat and water quality, mitigation and monitoring plans. An ECCC representative asked about stormwater management plans for the Project. The Proponent indicated that all stormwater from the site is being managed and treated with capture systems and bioswales, and as there will be no direct (untreated) runoff into Lake Ontario, there is expected to be an improvement to the current system where stormwater flows directly into the lake. The Proponent expressed willingness to update the AHT team in the future.

6. From the perspective of the mandate and area(s) of expertise of your department or agency, does the Project have the potential to cause adverse effects within federal jurisdiction or adverse direct or incidental effects as described in section 2 of the IAA? Could any of those effects be managed through legislative or regulatory mechanisms administered by your department or agency? If a licence, permit, authorization or approval may be issued, could it include conditions in relation to those effects?

Specify as appropriate.

Based on the limited information received about the Project and the conditions at the Project site it appears reasonable to anticipate that adverse effects have the potential to occur in relation to ECCC's mandate and areas of expertise, particularly with respect to surface water quality, air quality, greenhouse gas emissions and climate change, migratory birds and species at risk.

Greenhouse gas emissions and climate change

The construction, operation, and decommissioning of the proposed Project may result in greenhouse gas (GHG) emissions.

The [Strategic Assessment of Climate Change \(SACC\)](#) (published in October 2020) provides guidance related to climate change throughout a federal impact assessment process. The SACC outlines information that the proponent should provide during the impact assessment process on GHG emissions, impact of the Project on carbon sinks, impact of the Project on federal emissions reduction efforts and on global GHG emissions, GHG mitigation measures and climate change

resilience; the circumstances in which an upstream GHG assessment would be required; and the circumstances in which a credible plan to achieve net-zero emissions by 2050 will be required.

More details are provided in the [draft *Technical Guide Related to the Strategic Assessment of Climate Change: Guidance on quantification of net GHG emissions, impact on carbon sinks, mitigation measures, net-zero plan and upstream GHG assessment*](#) published in August 2021.

Aside from the SACC, which provides guidance on how to assess climate change impacts in the IA process, ECCC doesn't have a legislative or regulatory mechanism that could manage effects related to climate change.

Air Quality

The Project has the potential to cause adverse effects on air quality. There isn't a mechanism administered by ECCC to manage adverse effects to air quality.

Surface Water Quality

The Project has the potential to cause adverse effects on surface water quality. ECCC is responsible for the administration of subsection 36(3) to (6) of the *Fisheries Act*, which prohibits the deposit of a deleterious substance in waters frequented by fish unless authorized by regulations.

Migratory Birds and Species at Risk

The activities linked to the construction, operation, and decommissioning of the Project could have negative effects on terrestrial wildlife resources (wildlife), including migratory birds, protected under the *Migratory Birds Convention Act, 1994* (MBCA), and non-aquatic species at risk (amphibians, arthropods, birds, lichens, terrestrial mammals, mosses, reptiles, and vascular plants) listed on the *Species at Risk Act* (SARA).

Individual mortality and the destruction of nests and eggs or any other structure necessary for the reproduction and survival of species of risk could occur during all Project phases, particularly during site preparation. Mortality in migratory birds and species at risk could also occur because of collisions with vehicles or infrastructure related to the Project. There is a higher risk that these effects would be more severe for migratory birds that are also species at risk and species where habitat is sensitive to disturbance (e.g., wetlands) or where there is already a high degree of cumulative effects to habitat or individuals.

Migratory birds and non-aquatic species at risk could be affected by sensory disturbances during the construction, operation, and decommissioning of the Project. Some examples of potential sources of sensory disturbance include noise from various Project activities, lights, vibrations from excavation and blasting work and the operation of machinery. The amount, duration, frequency, and timing of noise are important to understand potential effects. Sensory disturbance may make adjacent habitats unsuitable for use by wildlife and cause avoidance effects in many species.

The majority of SARA-listed threatened and endangered species that are currently understood to have potential or confirmed presence in the Project area are also listed threatened or endangered under Ontario's *Endangered Species Act* (ESA) and are subject to protection provisions under that Act, with the exception of Barn Swallow, Canada Warbler, and Wood Thrush. Note however, that each of these are migratory birds that are protected by the MBCA and therefore receive protection for individuals and residences under SARA on all lands in Canada and none have critical habitat identified in the Project area.

Specific Information Related to Migratory Birds

ECCC administers and enforces the MBCA, which prohibits the harming of migratory birds, the nests of migratory birds and/or their eggs. ECCC's guidelines to avoid harm to migratory birds can be found at <https://www.canada.ca/en/environment-climate-change/services/avoiding-harm-migratory-birds/reduce-risk-migratory-birds.html>.

Window collisions are a significant threat to migratory birds. In Canada, window collisions kill 16 to 42 million birds per year and is one of the top sources of human-caused bird mortality. Highly reflective and clear materials (e.g., glass and acrylic) are the most dangerous to birds. Accordingly, the Proponent should refer to the Canadian Standards Association's standards for bird-friendly design: <https://www.scc.ca/en/standardsdb/standards/29805> to reduce the adverse effects to migratory bird species. Additional information about the risks of artificial light and window collisions is available here: <https://www.canada.ca/en/environment-climate-change/services/avoiding-harm-migratory-birds/faq-bird-collisions-glass-windows.html>.

In the context of the Ontario Place Redevelopment, there is no regulatory mechanism available to lift the prohibition against killing or injuring migratory birds. It is the responsibility of the Proponent to comply with the requirements of the MBCA and its regulations and to avoid harming migratory birds. A permit could be issued in limited circumstances, for example if a migratory bird was causing damage or danger.

Specific Information Related to Species at Risk

ECCC is responsible for the overall administration and enforcement of the SARA. The federal Minister of Environment and Climate Change is responsible for non-aquatic species listed on Schedule 1 of the Act (e.g., Chimney Swift, Bank Swallow, Barn Swallow, Canada Warbler, Eastern Meadowlark, Wood Thrush, and potentially Red-headed Woodpecker occur on the site according to information provided by the requestor and based on expert opinion). The federal Minister of Fisheries and Oceans is responsible for aquatic species at risk.

The proposed Project is located on non-federal lands; therefore, under section 2 of IAA, only migratory bird species at risk may be considered by ECCC as "within federal jurisdiction." It is important to note that, on non-federal lands, listed species that are not an aquatic species or a migratory bird protected by the MBCA can only be protected under SARA by an order made by the Governor in Council (GIC), on the recommendation of the Minister. The Minister must recommend that such an order be made if the Minister is of the opinion that the laws of the province or territory do not effectively protect the species or the residences of its individuals.

Compliance with the terms and conditions of provincial regulatory or permitting systems does not absolve the Proponent from responsibility to comply with the MBCA and SARA requirements.

In the context of the Ontario Place Redevelopment, there are limited circumstances in which the identified adverse effects on species at risk could be managed through legislative or regulatory mechanisms administered by ECCC. Based on the prohibitions currently in force, a SARA permit would only be required in the event that the individuals or residences of migratory bird species at risk would be affected by the Project activities. In this case, the Proponent would be required to ensure that reasonable alternatives to the activity that would reduce the impact on the species have been considered and the best solution has been adopted; all feasible measures will be taken to minimize the impact of the activity on the species or its critical habitat or the residences of its individuals; and activity will not jeopardize the survival or recovery of the species. However, these considerations would relate only to the activity(ies) that would affect individuals or residences of the migratory bird species at risk and would not address any other identified adverse effects for terrestrial species at risk. Within the footprint for the Ontario Place Redevelopment, there are two migratory bird species at risk that receive year-round residence protection and are confirmed to occur or are likely to occur in the Project footprint: Chimney Swift and Red-headed Woodpecker. As

indicated above, the majority of SARA-listed threatened and endangered species that are currently understood to have potential or confirmed presence in the Project area are also listed threatened or endangered under Ontario's *Endangered Species Act* (ESA) and are subject to protection provisions under that Act.

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7. Does your department or agency have a program or additional authority that may be relevant and could be considered as a potential solution to concerns expressed about the Project? In particular, the following issues have been raised by the requestor or are described in section 2 of the IAA:
- fish and fish habitat, including matters related to surface and groundwater,
 - migratory birds, including matters related to vegetation and habitat,
 - federally listed species at risk,
 - effects on Indigenous people of Canada, including on physical and cultural heritage, the current use of lands and resources for traditional purposes, or any structure, site or thing that is of historical, archaeological, paleontological or architectural significance, or on communities' health, social or economic conditions,
 - adverse changes to the environment that would occur on federal lands, including federal water-lots, and lands outside Ontario or Canada, including transboundary effects of greenhouse gas emissions as well as air emissions.

If yes, please specify the program or authority.

It is the responsibility of the Proponent to comply with the following requirements:

- *Migratory Birds Convention Act, 1994* requires the owner/operator to ensure all phases of the Project are carried out in a manner that protects migratory birds and avoids harming, killing or disturbing migratory birds or destroying, disturbing or taking their nests or eggs.

Furthermore, migratory birds listed on Schedule 1 of *Species at Risk Act* (SARA) may have additional protection considerations. For some migratory bird species listed under the SARA, the residence prohibition will protect nests that are not active but are re-used in subsequent years. Critical habitat of species-at-risk provisions are described under section 58 of the SARA. For more information about SARA Section 58 and migratory birds, please consult the Protection statement for the habitat to which the Migratory Birds Convention Act, 1994 applies for migratory birds listed under the *Species at Risk Act*: <https://species-registry.canada.ca/index-en.html#/documents/1638>.

- For more information on migratory bird residences and protection requirements, please refer to the Species at Risk Registry <https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/residence-descriptions.html>. Given the potential for Red-headed Woodpecker and Chimney Swift to be present on the Project site, the proponent should contact ECCC-CWS regarding potential SARA permitting requirements if residences may be destroyed during site clearing.

- Prohibitions may be in force on land other than federal land pursuant to other orders or regulations under SARA. It is possible that further prohibitions may come into force in the future through orders in Council for individuals, residences and critical habitat on non-federal lands and / or through ministerial order for critical habitat on federal lands. It is also possible that, over the course of the assessment or after the assessment, additional species could be listed under SARA; permits may be required for project activities that affect these additional species. Proponents are advised to monitor for such developments on the SARA Registry here: <https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry.html>.

- Environment and Climate Change Canada administers Section 36(3) of the *Fisheries Act*, which prohibits the deposit of deleterious substances into waters frequented by fish, unless the deposit is authorized by regulations. The owner/operator will be required to ensure there are no deposits of

deleterious substances that would degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish.

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8. Does your department or agency have information about the interests of Indigenous groups in the vicinity of the Project; the exercise of their rights protected by section 35 of the *Constitution Act, 1982*; and/or any consultation and accommodation undertaken, underway, or anticipated to address adverse impacts to the section 35 rights of the Indigenous groups?

If yes, please specify.

No.

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9. If your department has guidance material that would be helpful to the Proponent or the Agency, please include these as attachments or hyperlinks in your response.

Strategic Assessment of Climate Change (SACC):

<https://www.strategicassessmentclimatechange.ca/16736/widgets/65686/documents/40846>

Draft Technical Guide Related to the Strategic Assessment of Climate Change: Guidance on quantification of net GHG emissions, impact on carbon sinks, mitigation measures, net-zero plan and upstream GHG assessment:

<https://www.strategicassessmentclimatechange.ca/24391/widgets/98155/documents/62220>

ECCC's Guidelines to Reduce Risk to Migratory Birds

<https://www.canada.ca/en/environment-climate-change/services/avoiding-harm-migratory-birds/reduce-risk-migratory-birds.html>

Pollution prevention planning provisions of part 4 of the Canadian Environmental Protection Act, 1999: Guidelines, Third edition

<https://www.canada.ca/en/environment-climate-change/services/pollution-prevention/planning-notice/guidelines.html>

Federal Sustainable Development Strategy

<https://www.canada.ca/en/services/environment/conservation/sustainability/federal-sustainable-development-strategy.html>

Cheminfo Services Inc., 2005. "Best Practices for the Reduction of Air Emissions From Construction and Demolition Activities",

<http://www.bv.transports.gouv.qc.ca/mono/1173259.pdf>

Rob Clavering

Name of departmental / agency responder

Acting Regional Director, EPOD, Ontario

Title of responder

October 18, 2023

Date