

November 20, 2024

Highway 413 Consultation
Environmental Assessment Branch
Ministry of Environment, Conservation and Parks
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Re. the *Highway 413 Act* – Schedule 3 of Bill 212, *Reducing Gridlock, Saving You Time Act*, 2024 ([ERO #019-9213](#))

We, the nine undersigned organizations, are writing to express our strong opposition to the proposed *Highway 413 Act*, schedule 3 of Bill 212, *Reducing Gridlock, Saving You Time Act*, 2024.

If passed, the *Highway 413 Act* will facilitate the development of a highway that most Ontarians do not support and will not solve the traffic congestion it purports to, while causing irrevocable harm to irreplaceable natural ecosystems and our precious farmland. It represents an egregious attempt to move forward with the development of Highway 413 regardless of the cost by reducing environmental impact assessments, Indigenous consultation and public consultation to mere checkbox exercises thereby undermining transparency and accountability.

Instead of moving forward with the *Highway 413 Act*, we urge the government to invest in alternative solutions, such as improved regional transit and more efficient land use (i.e., intensification in existing urban boundaries) that will more effectively address traffic congestion without causing the extensive environmental damage that will result if Highway 413 is built.

A Proposal Under False Premises

While the ERO posting states that Highway 413 is “expected to help manage traffic within the Greater Golden Horseshoe,” the Government of Ontario knows this is simply untrue. The Ministry of Transportation’s (MTO) own internal documents found that even with the development of Highway 413, commute speeds to and from Toronto at peak times are projected to be under 50 kilometres per hour, potentially as low as under 20 kilometres per hour, by 2041. Traffic projections remain the same regardless of whether Highway 413 is built with four, six or eight lanes and whether other priority

highways are built (e.g., the Bradford Bypass).¹ These projected commute speeds are incredibly similar to the projected speeds on sections of Highway 401 in the absence of Highway 413, as reported in the MTO's official transportation plan for the Greater Golden Horseshoe.² Thus, building Highway 413 is not and cannot be expected to provide a long-term solution to traffic congestion in the Greater Golden Horseshoe.

Furthermore, projected commute speeds assuming a scenario where Highway 413 and other priority highways are built fail to consider the impact of induced demand, the concept whereby new highways will attract additional drivers to the road and new developments along their route, which would also increase congestion. As transportation modelling and planning experts told The Trillium, "not only will 413 fail to end the gridlock, it will also enable the kind of development that makes it worse."³

The ERO posting also states that the *Highway 413 Act* is being introduced with the understanding that the Government of Ontario "is building Highway 413, recognizing the importance of this highway to millions of drivers from across Ontario." This statement contradicts 2023 polling that found that 74 percent of Ontarians do not support construction of highways in the Greenbelt, like Highway 413.⁴ Numerous local municipalities have also officially opposed Highway 413, including Halton Hills, Halton Region, King Township, Orangeville, Peel Region, Mississauga, Toronto and Vaughan.⁵ Although Caledon and Brampton have not come out in direct opposition to the highway, neither supports a fast-tracked environmental assessment process.⁶

¹ Jessica Smith Cross, "Internal Ontario government traffic forecast shows crushing gridlock ahead — even with the 413," *The Trillium*, August 16, 2024, <https://www.thetrillium.ca/news/municipalities-transit-and-infrastructure/internal-ontario-government-traffic-forecast-shows-crushing-gridlock-ahead-even-with-the-413-9356033>.

² Ministry of Transportation, *Connecting the GGH: A Transportation Plan for the Greater Golden Horseshoe* (Government of Ontario, 2022), <https://files.ontario.ca/mto-ggh-transportation-plan-en-2022-03-10.pdf>. See page 11.

³ Cross, "Crushing Gridlock Ahead."

⁴ David Suzuki Foundation, "Eighty-one per cent of Ontarians agree with farmers' opposition to Highway 413," December 15, 2023, <https://davidssuzuki.org/press/eighty-one-per-cent-of-ontarians-agree-with-farmers-opposition-to-highway-413/>.

⁵ CBC News, "Toronto city council votes to oppose provincial plans for Highway 413 in northwest GTA," *CBC News Toronto*, March 10, 2021, <https://www.cbc.ca/news/canada/toronto/toronto-city-council-opposes-provincial-plans-highway-413-vote-1.5945118>.

Emma McIntosh, "Ford government's Hwy. 413 dreams fade as another municipality pulls support," *National Observer*, March 12, 2021, <https://www.nationalobserver.com/2021/03/12/news/ford-governments-highway-413-dreams-fade-another-municipality-pulls-support>.

The Corporation of the Township of King, "Council Meeting #7 – Minutes," March 29, 2021, <https://king.civicweb.net/Portal/MeetingInformation.aspx?Org=Cal&Id=1263>.

⁶ Alyssa Parkhill, "Caledon calls on Province for public consultations on Highway 413 plan," *Toronto Star*, March 5, 2021, https://www.thestar.com/news/canada/caledon-calls-on-province-for-public-consultations-on-highway-413-plan/article_b1d6a3e0-90db-5932-b177-f1f28889adf8.html.

Evidently, Highway 413 does not have the broad base of support that this statement suggests.

Ministerial Responsibilities Abandoned

Bypassing the typical environmental assessment requirements is entirely inappropriate for a major infrastructure project that is widely known would produce extensive negative environmental impacts. Proceeding with the *Highway 413 Act* would undermine the purpose of the *Environmental Assessment Act*, which is to provide for the betterment of the people of Ontario by supporting the protection, conservation and wise management of the environment.⁷ It would also directly contradict several responsibilities of the Ministry Environment, Conservation and Parks (MECP), including to “protect Ontario’s air, land, water, species at risk and their habitats” and to “use the best available science and research to develop and deliver policies, legislation, regulations, standards, programs and services.”⁸

Among its expected impacts, the proposed route for Highway 413 would pave over 800 hectares of farmland and 162 hectares of Greenbelt land, cross about 132 rivers and streams, and threaten the ecological integrity of the Credit, Etobicoke and Humber River watersheds.⁹ The proposed route would also pass through seven provincially significant wetland complexes. It would destroy or partially destroy a total of 75 wetlands, 28 of which are considered provincially significant.¹⁰

Construction of Highway 413 would further reduce and fragment remaining natural cover in watersheds that are already highly urbanized in many areas, with dire consequences for water quality and for the many species that live there. This includes at least 29 species at risk and hundreds of other species of conservation concern.¹¹ Among the species at risk that would be negatively affected by Highway 413 is the reddsides dace, a provincially and federally endangered minnow. Both the Humber and Credit Rivers and their tributaries are identified as critical habitat for reddsides dace in the

⁷ *Environmental Assessment Act*, R.S.O., 1990, c. E.18, s. 2.

⁸ “What we do,” Ministry of the Environment, Conservation and Parks, accessed November 12, 2024, <https://www.ontario.ca/page/ministry-environment-conservation-parks>.

⁹ Environmental Defence, *Concrete Consequences: How Highway 413 would put GTA watersheds at risk* (Environmental Defence, 2024), https://environmentaldefence.ca/wp-content/uploads/2024/09/Environmental-Defence_Concrete-Consequences_2024.pdf

¹⁰ Dr. Scott Wallace et al. to The Honourable Jonathan Wilkinson, Minister of the Environment and Climate Change, April 23, 2021, Scientists call for federal environmental assessment of Highway 413, <https://registrydocumentsprd.blob.core.windows.net/commentsblob/project-81381/comment-54310/Scientists'%20letter%20on%20Hwy%20413.pdf>.

¹¹ Environmental Defence, *Concrete Consequences*.

federal recovery strategy.¹² Together, these two rivers and their tributaries provide over 300 kilometres of critical habitat for the species and comprise about a third of all identified critical habitat. Building Highway 413 through these watersheds would have particularly devastating consequences for the future of redbside dace in Canada, in addition to its negative effects on the numerous other habitats and species along its proposed route. Highway 413 would not only degrade water quality but increase the likelihood of more significant flooding and erosion downstream, a risk that is only increasing with the effects of climate change.

To proceed with a project that would have such significant impacts without having a comprehensive understanding of the full extent of those and other potential impacts would undermine the long-term health and well-being of Ontarians, our ecosystems and our previous farmland.

Proposed Accelerated Process Lacks Accountability

The proposed *Highway 413 Act* outlines certain requirements and expectations for the Minister of Transportation to assess the impacts of Highway 413 on the environment and identify how negative impacts would be mitigated via an accelerated assessment process and environmental impact assessment report (EIAR). However, there is no process for formal review and approval of this document by an objective and knowledgeable third party. In a typical comprehensive environmental assessment, MECP is required to review and approve the assessment, and may request additional information if the submitted assessment is deemed insufficient. The Minister of Environment, Conservation and Parks (or a tribunal or entity to which authority has been delegated) also has the authority to ultimately determine whether a project goes forward or not, or to place conditions on the project's approval, based on the outcome of the environmental assessment.¹³

Because there is no requirement for the EIAR established in the *Highway 413 Act* to be externally reviewed or approved, there is no mechanism to uphold objective standards for the study of potential impacts, environmental protections or mitigation measures, nor is there a mechanism to halt or alter the development of Highway 413 based on the outcome of the EIAR. Without these mechanisms, it is reasonable to expect the EIAR's findings will hold little to no bearing over decision-making regarding if or how to

¹² Department of Fisheries and Oceans, *Recovery Strategy and Action Plan for the Redside Dace (Clinostomus elongatus) in Canada*, (Government of Canada: 2024), <https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/recovery-strategies/redside-dace-proposed-2024.html#toc11>.

¹³ *Environmental Assessment Act*, R.S.O., 1990, c. E.18, ss. 17.11 and 17.14 to 17.23.

proceed with the development of Highway 413. In this case, the EIAR would serve no meaningful purpose other than to “check a box”, which is an affront to good governance and well-established public processes and legislative standards.

Provisions of subsection 2(3) of the *Highway 413 Act* would also allow early works, land acquisitions, contracts and other authorizations associated with the development of Highway 413 to proceed prior to completion of the accelerated environmental assessment process and the EIAR. In doing so, the *Highway 413 Act* would create conditions where momentum behind the project can be established before the full extent of its environmental impacts are documented, further reinforcing the expectation that this information is unlikely to be meaningfully considered in decision-making.

Furthermore, section 12 of the proposed *Highway 413 Act* exempts any activities associated with the Highway 413 from sections 3(5) (a) and 3(6) of the *Planning Act*. These exemptions allow the development of the highway to proceed even if it contradicts the natural heritage and other policies of the Provincial Planning Statement (2024), including strict protections for Provincially Significant Wetlands and protections for other significant natural heritage features. This exemption from conforming with the Provincial Planning Statement further erodes accountability to uphold basic environmental protections.

The accelerated environmental assessment process proposed in the *Highway 413 Act* appears to be no more than a checkbox exercise, with no oversight, no mechanism to halt or alter plans to develop Highway 413 based on the outcome of the EIAR, and complete disregard for existing provincial environmental protections.

Undermining the Rights of Indigenous Peoples

In addition to the disregard for environmental protections, Indigenous consultation plans proposed in the *Highway 413 Act* fail to meaningfully uphold and respect the rights of Indigenous Peoples, including the Duty to Consult.

While the proposal includes plans to develop an Indigenous consultation plan (section 4), there is no opportunity for Indigenous Peoples to participate in its development. Indigenous communities should be part of the process to determine what is considered meaningful consultation. Furthermore, nowhere in the proposal to create an Indigenous consultation plan does the *Highway 413 Act* mention a need to gain consent from affected Indigenous Peoples or Communities. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), to which Canada has committed, clearly

establishes Indigenous Peoples' right to free, prior and informed consent before legislative or administrative measures that may affect them are adopted or implemented (Article 19) and before any activities are undertaken on their traditional territories (Article 28). To proceed with a project as extensive and impactful as Highway 413 without the consent of affected Indigenous Peoples thereby fails to uphold Indigenous rights established through UNDRIP.¹⁴

The proposed *Highway 413 Act* also includes plans to distribute the draft EIAR to identified Indigenous Communities for comment (section 7(3)) and 8(1)), consider the feedback received and prepare a summary of concerns raised and actions taken to address them for the final EIAR (sections 8(2) and 8(3)), and redistribute the final EIAR to the identified Communities (section 8(5)). This proposed process does not provide opportunities for Indigenous Communities to provide feedback on how the Ministry of Transportation plans to address their concerns, creating a situation where there is no accountability to provide meaningful and mutually agreed-upon solutions to any concerns that are raised. Furthermore, the archaeological assessment requirements associated with the EIAR proposed in the *Highway 413 Act* remain unclear, leaving potential sites of archaeological importance to Indigenous Peoples at risk of being destroyed without proper documentation and consultation with the affected Communities.

Finally, the *Highway 413 Act* also proposes to allow exempt early works associated with Highway 413 from the EIAR process entirely, allowing such works to begin prior to the completion of the EIAR. This exemption means that areas of interest to Indigenous Peoples may be damaged before the consultation and environmental assessment process has been completed and further engrains an apparent intention to proceed with the development of Highway 413 as currently proposed regardless of the input received from affected Indigenous Communities, thereby failing to meaningfully uphold the Duty to Consult.

Proceeding with the development of Highway 413 without meaningful consultation and without clear intent to effectively address the concerns of Indigenous Peoples demonstrates a lack of regard for the Duty to Consult and violates inherent, treaty and constitutional rights of Indigenous Peoples.

¹⁴ United Nations, *United Nations Declaration on the Rights of Indigenous Peoples* (2007), https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf.

Public Consultation and Transparency Undermined

The *Highway 413 Act* also includes multiple provisions which undermine meaningful consultation and transparency with the general public related to Highway 413.

While the proposed accelerated environmental assessment process includes an opportunity for the public to provide comments on the draft EIAR and any major changes requiring an addendum, there is little accountability to address any feedback that is received. Furthermore, exempting early works from the EIAR process and allowing such works to begin prior to the completion of the EIAR means that certain works can proceed prior to the public comment period. Again, this approach suggests that the Government of Ontario intends to proceed with the development of Highway 413 as currently proposed regardless of any feedback they may receive from the public. The ability for the public to meaningfully comment on the EIAR would be further reduced by section 6(4) of the *Highway 413 Act*, which allows the Minister of Transportation to decide not to share the studies or updates of studies used to inform the EIAR if, in the opinion of the Minister, they “contain information about sensitive natural or cultural heritage matters.” Thus, the proposed approach renders public consultation on the EIAR effectively meaningless.

Opportunities for public consultation regarding the development of Highway 413 would be further reduced as section 13 of the *Highway 413 Act* exempts any proposal to issue, amend or revoke an instrument for or related to the development of Highway 413 from the minimum public consultation requirements described in Part II of the *Environmental Bill of Rights* (EBR). While the EBR would typically require such instruments to be posted on the Environmental Registry of Ontario for public comment at least 30 days prior to a decision being made, these requirements would no longer apply. Once again, this would allow significant decisions to be made regarding Highway 413 without an opportunity for members of the public to raise their concerns. Efforts to degrade opportunities for public participation in environmental decision-making has been a trend exercised by the Government of Ontario, as noted by the Auditor General’s 2023 report on the Operation of Environmental Bill of Rights.¹⁵ This trend goes against the core mandate of the EBR and threatens to infringe upon rights to a healthy environment.

¹⁵ Office of the Auditor General of Ontario, *Operation of the Environmental Bill of Rights* (Office of the Auditor General of Ontario; 2023), https://www.auditor.on.ca/en/content/annualreports/arreports/en23/AR_EBR_en23.pdf.

These efforts to limit public consultation related to Highway 413 also undermine public trust. The lack of transparency with the government's approach to infrastructure projects was recently highlighted by The Narwhal when they reported on the suspiciously small amount of documentation of former Chief of Staff Ryan Amato's involvement in the Highway 413 and Bradford Bypass projects, despite his known role in both projects.¹⁶

Better Alternative Solutions Are Available

Importantly, Highway 413 is not the only option available to address concerns about traffic congestion in the Greater Toronto Area (GTA). In fact, as previously stated, it is not even expected to be a particularly effective solution. Therefore, we propose investing in the following alternative solutions to traffic congestion in the GTA, as an alternative to pushing forward the extremely damaging and unwarranted Highway 413 via the proposed *Highway 413 Act*:

- **Subsidizing Highway 407 for transport trucks:** A 2023 study found that subsidizing Highway 407 tolls for transport trucks could significantly reduce traffic congestion on Highway 401 and improve journey times for truckers. Investing in a subsidy that would make Highway 407 toll-free for truckers for 30 years would be less economically costly than even the lowest cost estimate for Highway 413 and could alleviate traffic congestion much sooner than the proposed new highway by making better use of existing infrastructure.¹⁷
- **Investing in public transportation:** Expanding the service of GO trains and buses to provide more frequent and reliable service throughout the GTA would provide more commuters with a viable alternative to driving personal vehicles, thereby reducing traffic congestion by reducing the number of cars on the road. This solution has the added benefit of reducing carbon emissions associated with driving, meaning it would also contribute to meeting provincial emissions reduction targets and mitigating climate change.
- **Supporting active transportation:** Providing safe and connected active transportation networks, including bike lanes, trails and sidewalks, may also encourage more local commuters to walk or bike to work rather than driving.

¹⁶ Emma McIntosh, "Key figure in Ontario Greenbelt scandal worked on Highway 413 and Bradford Bypass. But records are scarce," *The Narwhal*, November 6, 2024, <https://thenarwhal.ca/ryan-amato-greenbelt-highway-records/>.

¹⁷ Eunomia Research & Consulting Ltd, *Comparison of Highway 413 and Highway 407 for Improving Truck and Freight Mobility in the Greater Toronto Area* (Environmental Defence: 2023), <https://environmentaldefence.ca/wp-content/uploads/2023/11/Eunomia-Research-The-Freight-Escape.pdf>

Like investing in public transit, this would help reduce traffic congestion by reducing the number of cars on the road and would similarly contribute to meeting provincial emissions reduction targets and mitigating climate change by reducing carbon emissions.¹⁸

Conclusion

The *Highway 413 Act* represents an egregious attempt to move forward with the development of Highway 413 regardless of the cost, by exempting the project from being held accountable to any meaningful standard of environmental protection, consultation with Indigenous Peoples, public consultation and transparency. We oppose this proposed legislation and urge you to abandon it immediately in favour of investing in solutions to traffic congestion that will be more effective and less costly, environmentally and economically.

Sincerely,

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¹⁸ Amendments to the *Highway Traffic Act* proposed under schedule 4 of Bill 212 ([ERO #019-9266](#)) would ultimately make it more difficult for municipalities to expand active transportation networks by establishing safe bike lanes along major streets. This is a step in the wrong direction, undermining efforts to reduce traffic congestion and meet emissions targets by supporting the transition to using active transportation for local trips.

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