

**Review Panel  
Public Hearing**

**Commission d'examen  
Audience publique**

**Milton Logistics Hub  
Project**

**Projet de pôle logistique  
de Milton**

**Review Panel**

Ms. Lesley Griffiths  
Dr. Isobel Heathcote  
Mr. William McMurray

**Commission d'examen**

M<sup>me</sup> Lesley Griffiths  
M<sup>me</sup> Isobel Heathcote  
M. William McMurray

Holiday Inn Express & Suites  
2750 High Point Drive  
Milton, Ontario

July 19, 2019

Holiday Inn Express & Suites  
2750 High Point Drive  
Milton (Ontario)

Le 19 juillet 2019

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1 Milton, Ontario / Milton (Ontario)

2 --- Upon commencing on Friday, July 19, 2019

3 at 9:30 a.m. / L'audience débute le vendredi

4 19 juillet 2019 à 9 h 30

5 MS. MAISONNEUVE: Hello, everyone.

6 Could I have your attention, please. Hello, everyone.

7 Hi. Welcome to the Milton Logistics Hub Project

8 Review Panel public hearing. My name is Elyse

9 Maisonneuve, I'm part of the Review Panel Secretariat,

10 and I will do the safety briefing today. So before we

11 start we will talk about some safety matters. In case

12 of emergency there will be an alarm that will sound

13 and when you hear that, you will proceed to one of the

14 emergency exits. There is one at the front and one at

15 the back.

16 There is a muster point at the back of

17 the parking lot that's where we will meet. and if you

18 notice anybody missing from your party please let us

19 know. We are part of the Secretariat and we all have

20 our white name tags.

21 If these doors are blocked there is

22 another emergency exit at the front where you come in

23 usually and there is another one up here to the left.

24 So you can use any of those exits.

25 If you discover an emergency there are

1 some red pull stations for the alarm in here and in  
2 this room and outside in the hallway. There are also  
3 fire extinguishers in the hallway. And if there is a  
4 minor medical emergency, there is a first aid kit at  
5 the front desk and they are also able to provide first  
6 aid, the hotel staff.

7 For any major medical emergency we  
8 will call 9-1-1 and have the ambulance come to the  
9 hearing. And please, at this time, if you have any  
10 cell phones, turn them to silent or vibrate, not to  
11 disturb the hearing.

12 There are washrooms down the hall to  
13 the right and please be careful in the room there are  
14 wires. We have tried to tape them down, but some of  
15 them are loose, so please be careful not to trip in  
16 the room

17 The Panel will be here in a moment and  
18 we will get started. Thank you for your attention.

19 THE CHAIRPERSON: Good morning,  
20 everybody. I would like to welcome you all to this  
21 final session of the public hearing, and as you know,  
22 this is the closing remarks session. You will  
23 remember that, unfortunately, we had hoped to begin  
24 the hearing way back, a month ago, five weeks ago,  
25 with a ceremony provided by the Mississaugas of the

1 Credit First Nation and that it wasn't possible at  
2 that time.

3 We are extremely grateful that Elder  
4 Garry Sault of the Mississaugas of the Credit First  
5 Nation is able to provide us with the ceremony to  
6 begin this final session. So, I will now turn this  
7 over to Elder Garry Sault.

8 ELDER SAULT: (Anishinaabewmowin  
9 spoken) We are going to step out into the parking  
10 lot, mainly because they won't let us turn on our  
11 fire, so we have to do it outside.

12 --- Opening ceremony

13 THE CHAIRPERSON: So, before we begin  
14 with our presentations, we have the -- the Panel has a  
15 couple of housekeeping matters.

16 Firstly, with respect to undertaking  
17 responses. Firstly, we would like to acknowledge that  
18 the Panel has received all responses to the  
19 undertakings from the interested parties.

20 The Panel is satisfied that those  
21 responses provide adequate information for it to make  
22 its conclusions and recommendations for the purposes  
23 of the joint process of the review of the proposed  
24 project.

25 The second housekeeping item is a

1 ruling on Halton Municipalities appendices in written  
2 closing remarks. In Halton Municipalities written  
3 closing remarks, it included five appendices, two of  
4 which CN objected to on the basis that they contained  
5 substantive new technical and opinion evidence.

6 CN noted that the lateness of the  
7 submission prevented it from consulting with its  
8 technical experts and providing its response in the  
9 closing hearing session. Halton Municipalities  
10 provided this response to CN's objection last night.

11 The Review Panel has reviewed these  
12 considerations and the appendices in question and  
13 notes that there is not a lot of new information or  
14 opinion contained in the appendices. But the  
15 information was filed after the deadline for new  
16 information which was Friday, July 12<sup>th</sup>. I note that  
17 the right of reply rests with the proponent in  
18 proceedings such as this.

19 The Panel has decided that it will  
20 allow Appendices A and B into the record, but will  
21 also provide CN with the opportunity to reply to this  
22 information either orally or in writing.

23 The Panel's preference is that CN  
24 provide the response orally today. If that is not  
25 possible, we are prepared to receive a written

1 response from CN no later than 5:00 p.m. eastern time  
2 on Monday, July the 22<sup>nd</sup>. As always, the Panel  
3 favours conciseness in its response.

4 So that concludes our housekeeping  
5 items and we can now proceed with the agenda. So, we  
6 have -- we have five presentations, five parties are  
7 going to be providing us with oral closing remarks, in  
8 addition to written closing remarks that have been  
9 submitted. And we will determine when we need breaks  
10 in the day.

11 Just to clarify, there will be no  
12 questions after these presentations unless the Panel  
13 has a question or two of clarification, but those are  
14 the only questions that would be permitted in this  
15 session.

16 So saying that, let's begin and it's  
17 Milton Says No, if you would like to come forward.  
18 Good morning, Mr. Canzona and Ms. Newman.

19 **CLOSING REMARKS**

20 MR. CANZONA: Good morning. Hello.  
21 My name is Sev Canzona and I am here today on behalf  
22 of the community organization, Milton Says No. I  
23 would like to begin by thanking the Panel for the  
24 opportunity to present closing remarks on the proposed  
25 CN Intermodal Terminal. I would also like to thank



1 members of CEAA, dignitaries, members of the public  
2 and finally, CN representatives, for your time.

3 Milton Says No speaks on behalf of  
4 tens of thousands of Haltonians who have engaged on  
5 this issue and who look to us to represent their  
6 concerns and to educate them regarding this proposal.

7 For 12 days we listened to many hours  
8 of fervent testimony, both for and against the  
9 proposed Intermodal terminal. While CN has presented  
10 an impressive case by submitting thousands of pages of  
11 documentation and spending countless millions of  
12 dollars on expert testimony, as well as sponsorships  
13 and donations across Halton Region, the fact is that  
14 CN has missed a unique opportunity to refute their  
15 corporate image of uncaring corporate greed and  
16 excessive risk taking.

17 To quote from the CN website:

18 "Great community relations are  
19 vital to the running of  
20 [our]...transcontinental  
21 railroad. That's why  
22 [we]...strive to be a good  
23 neighbour -- not only in  
24 [our]...commitment to safety and  
25 environmental sustainability, but

1                   also in making  
2                   [our]...communities better and  
3                   safer places to work, live and  
4                   play.”

5                   Instead of using this public hearing  
6                   as an opportunity to be a good neighbour, engage in  
7                   dialogue as we just heard outside, and find a better  
8                   way forward, CN has simply parroted their familiar  
9                   marketing slogans and dug in further on their position  
10                  taken in their now four-year-old environmental impact  
11                  statement.

12                  The outlandish statements we have  
13                  heard from CN are riddled with such hypocrisy that a  
14                  few examples need to be highlighted. Number one.  
15                  While CN claims human health is a key valued component  
16                  because of inherent importance of well-being of humans  
17                  and regulatory requirements, they only assess changes  
18                  in air quality while disregarding or down playing  
19                  significant human health factors such as noise  
20                  exposure, light pollution, drinking water quality and  
21                  mental health.

22                  The topic of engine braking for  
23                  example has never once been raised, neither in the  
24                  environmental impact statement or during these  
25                  proceedings. How many other surprises are we in for?

1                   Number two. During testimony on June  
2 25<sup>th</sup>, CN stated that:

3                    "In the 2015 traffic surveys  
4 completed by our independent  
5 consultants' BA group along  
6 Britannia Road, a very small  
7 number of cyclists were recorded  
8 during these counts. I think it  
9 was in the order of two." (as  
10 read)

11                   This is a gross mischaracterization of  
12 facts. We cannot allow CN to enter into the record  
13 that only two cyclists are typically found on our  
14 roads, because it's simply isn't true.

15                   Number three. While CN claims that  
16 socio-economic conditions is an important valued  
17 component, they also assessed the increased vehicle  
18 and truck movement at the truck -- they only assessed  
19 the increased vehicle and truck movement at the truck  
20 entry point and employee entry point, while  
21 disregarding or down playing significant  
22 socio-economic factors such as impact on recreation,  
23 real estate values, and traffic congestion throughout  
24 the area outside of the intermodal terminal.

25                   Finally, number four. During

1 testimony on June 26<sup>th</sup>, CN stated that:

2 "The terminal is actually a  
3 relatively low volume and low  
4 density traffic generator. And,  
5 the trucks generated by the  
6 terminal will use multiple  
7 regional arterial roads to access  
8 highway 401. And therefore,  
9 beyond the proximity of the  
10 terminal truck access roadway  
11 will be rather dispersed and have  
12 a small to negligible impact on  
13 traffic operations and average  
14 commuter travel times." (as read)

15 CN seems to believe that the optimal  
16 policy is to have trucks travel long distances,  
17 greater than 10 kilometres for this location, to  
18 access a 400 series highway, as long as the truck  
19 routes are widely dispersed. Applying this policy, CN  
20 should be able to locate the proposed Intermodal  
21 terminal in many other locations throughout the GTHA  
22 preferably in the industrial area away from  
23 residential communities.

24 CN's passive aggressive strategy is  
25 obvious. They laid it bare for all to see during the

1 Panel hearings. By deliberately focusing on one  
2 environmental effect at a time, CN aims to downplay or  
3 minimize its adversity. This insidious behaviour  
4 treats wildlife and humans as mere objects, because  
5 wildlife has no voice as we heard outside. And most  
6 people can tolerate or justify one isolated effect at  
7 a time.

8                   However, if one were to apply a  
9 systemic approach and look at the big picture this  
10 proposal would be rejected outright. For example,  
11 residents may tolerate the additional air pollution  
12 generated by the terminal and 1,600 trucks daily. But  
13 the tipping point is the increased traffic congestion  
14 which triggers anxiety attacks and deteriorating  
15 mental health for untold residents. Or perhaps it's  
16 the increased noise pollution that pushes someone over  
17 the edge. Who knows?

18                   Throughout these proceedings it has  
19 become clear that the review Panel has a difficult  
20 task ahead. Your recommendation that will you make  
21 will have tremendous consequences for many years to  
22 come and will impact dozens of wildlife species and  
23 tens of thousands of outdoor enthusiasts and resident  
24 families that call Milton home.

25                   CN has present and strong case. A

1 case that assumes that at least 164 mitigation  
2 measures, as chosen by CN are actually implemented.  
3 One hundred and sixty-four (164) mitigation measures  
4 that lack any regulation or monitoring because CN  
5 didn't bother to consult with the required parties.

6 As further evidence of CN's deceptive  
7 and misleading strategy, we heard during these  
8 hearings that many of CN's so-called mitigation  
9 measures are not actually mitigation, but work  
10 required of CN in the normal course of project  
11 implementation. And that's thanks to the Panel  
12 through their questions and Halton Municipalities as  
13 well.

14 CN has the right to generate revenue  
15 and profits. CN has the right to purchase land. CN  
16 has the right to build intermodal terminals. However,  
17 CN does not have the right to infringe on our  
18 established community and our quality of life.

19 I would like to take you on a journey.  
20 A journey of the day in the life of a family living in  
21 Milton. Let's call them the Khan family. Like their  
22 neighbours, the Khans were attracted to Milton by the  
23 quality of life that offered greenbelt, fresh air,  
24 open spaces and most importantly, a peaceful and  
25 pleasant set to go raise their two young children,

1 Amir and Faiza.

2                   Their first years in Milton were  
3 filled with many opportunities for family recreation.  
4 Walks through the escarpment which afforded beautiful  
5 uninterrupted views, family bike rides on the  
6 extensive bike paths which inspired Amir to practice  
7 on local roads as he aspired to race in the velodrome  
8 one day. Mr. and Mrs. Khan appreciated the lifestyle  
9 Milton offered their growing family. The rapid growth  
10 in the surrounding area was somewhat of a concern and  
11 they have noticed a slight increase in traffic  
12 congestion but life couldn't be much better.

13                   Fast forward to the year 2025. The  
14 Khans didn't sleep well again last night because of  
15 the incessant noise coming from the Milton Intermodal  
16 Terminal. Mr. Khan was late for work again because he  
17 got stuck behind a line of transport trucks hauling  
18 containers. Amir and Faiza can no longer ride their  
19 bikes to school, because they don't feel safe around  
20 transport trucks and they find -- which they find loud  
21 and intimidating.

22                   There have been a rash of near misses  
23 between cyclists and transport trucks since the  
24 intermodal opened. Mrs. Khan drives the kids to and  
25 from school every day. Getting Amir to his baseball

1 games and Faiza to her gymnastics classes on time has  
2 become an exercise in driving frustration. Amir wants  
3 to quit baseball, because the noise and air pollution  
4 from the intermodal terminal are ruining the games.  
5 Faiza wants to quit the astronomy club, because light  
6 pollution from the Intermodal terminal is making it  
7 difficult to see stars and planets that once filled  
8 the sky.

9 The Khan family no longer hikes  
10 through the escarpment. The blight of the intermodal  
11 terminal has ruined the experience. The Khans have  
12 noticed fewer kids playing outdoors, as are their own.

13 Mr. and Mrs. Khan find that they are  
14 arguing more and more over their deteriorating  
15 lifestyle. They need to do something to protect their  
16 family and save their marriage. They need to move  
17 away from the problem. They need to move out of  
18 Milton. The real estate agent is sympathetic when he  
19 tells them that they can't afford to move because  
20 their home has declined significantly in value. They  
21 need to down size and move away from family.

22 Now, let's return to where we sit  
23 today, to where we still have an opportunity to do the  
24 right thing. We are not naïve. We know that when  
25 applying a strict interpretation of the *Environmental*



1     *Assessment Act* as CN is hoping for, this proposal  
2     might be accepted because the environmental effects  
3     can't be as bad as they actually seem.

4             However, if any consideration is given  
5     to the impact on this vibrant Canadian community, the  
6     Review Panel cannot endorse this proposal. Numbers  
7     are not the whole story. Perhaps even more important  
8     than the numbers is their interpretation. What  
9     exactly is a significant adverse environmental effect?  
10    How does one put a number on quality of life? How do  
11    we tell a mother with an asthmatic child that asthma  
12    is not a significant adverse effect? How do we tell a  
13    father whose daughter was killed by a transport truck  
14    while riding her bike that the accident was a  
15    justified environmental effect?

16            When the disastrous cumulative effects  
17    begin piling up will the residents of Milton and the  
18    surrounding region console themselves with the fact  
19    that CN is able to satisfy the voracious consumer  
20    demand for just in time goods?

21            To CN we say, don't just do things  
22    right, but do the right thing. Show some empathy.  
23    Step out of the boardroom for a moment. Answer a  
24    question or engage in dialogue without requiring that  
25    your lawyers be present.

1                   This year CN is marking its 100<sup>th</sup>  
2 anniversary with a wonderful program titled "A century  
3 of stories." Let's make this story the best one. One  
4 that we can all be proud of. Please expect to receive  
5 a letter signed by members of our community in which  
6 we ask you to respectfully and emphatically to  
7 withdraw your proposal for the CN Intermodal -- Milton  
8 Intermodal Terminal at this location once and for all.

9                   Thank you very much for the  
10 opportunity to speak today.

11                   THE CHAIRPERSON: Mr. Canzona and Ms.  
12 Newman, thank you very much for your presentation and  
13 thank you to you and all the members of your  
14 organization for your participation through this  
15 process.

16                   MR. CANZONA: Thank you.

17                   MS. NEWMAN: Thank you.

18                   THE CHAIRPERSON: So our next  
19 presentation is by Milton Residents Affected by  
20 Intermodal Lines, Milton R.A.I.L. Good morning, Mrs.  
21 Vogel Post.

22                   **CLOSING REMARKS**

23                   MS. VOGEL POST: Thank you. Milton  
24 Residents Affected by Intermodal Lines is not opposed  
25 to intermodal railways, CN, or big corporate. We are,

1       however, against the tremendous impact this project  
2       will bring to our community, as this is the wrong  
3       location choice. History shows countless individuals  
4       and civilizations coming together, standing up, and  
5       fighting for what they believed. Not only for  
6       survival, but to protect themselves and their future.

7               Today we live in a time of abundance  
8       and advantage, yet uncertainty. Globally, people are  
9       standing up to re-evaluate personal choices and  
10      challenging big businesses to reduce, eliminate, or  
11      change practices which contribute to the detrimental  
12      impacts on our environment. Effectively, our health  
13      and future as a civilization.

14             Hopefully, all of these groups and  
15      organizations will succeed in efforts to protect their  
16      community. Collectively and globally, we will  
17      responsibly contribute to improving the environment,  
18      our world and our future. Through this, we will all  
19      benefit.

20             We hear intermodal transport reduces  
21      global environmental impacts and that is good.  
22      However, when placed in the wrong location, those  
23      impacts are laser focused in one area. In a  
24      conversation with the CN Environmental Officer,  
25      regarding my thoughts on this being the wrong

1 location, I was told "someone needs to make the  
2 sacrifice." We say the right location would require  
3 no sacrifice. We have no doubt that the designated  
4 land in Milton is the wrong location choice, period.

5 For the most part, municipal,  
6 provincial and federal guideline restrictions and laws  
7 contribute to a better planned community, a healthier  
8 environment and a protected future for all. Today we  
9 stand up to our government and elected officials  
10 against aged federal policies which grant railways  
11 lesser restrictions and guidelines than we, as  
12 individual residents.

13 We take the stand to protect what  
14 should be any fundamental human right to protect and  
15 preserve our environment, our health, and our safety.

16 If approved, this project would --  
17 will not only cost the entire Halton Region  
18 financially, it will cost us with our health, our  
19 environment and our quality of life. And I don't know  
20 how we can put a price on that. It reminds me of a  
21 saying, "it doesn't matter how much money you have if  
22 you can't breathe to count it."

23 We understand an alternative location  
24 would cost CN and their shareholders additional funds.  
25 Perhaps that is the cost or sacrifice for serviceable,

1 responsible, and ethical business practice. And we  
2 believe that can exist.

3 An American company, Cascade  
4 Investments, owned by Bill Gates together with Bill  
5 and Melinda Gates, own the single largest number of  
6 shares in CN, more than 15 percent. Most people have  
7 heard of the Bill and Melinda Gates Foundation. The  
8 Gateses are abundantly generous philanthropists and  
9 contribute to improving health around the world,  
10 receiving countless testimonials for their investment  
11 in global health and development. We do not take  
12 their incredible contributions lightly. They are to  
13 be applauded for their continued work and hopefully  
14 are an inspiration to other successful business owners  
15 around the globe. Including CN.

16 There are other CN shareholders like  
17 internationally recognized philanthropic business  
18 owner, Warren Buffet, the owner of BNSF, Burlington  
19 North Santa Fe Railroad and Chairman and CEO of  
20 Berkshire Hathway. We can't help but recognize irony.  
21 The Gateses, the single largest shareholders, plus  
22 many others are essentially profiting from what would  
23 likely be the most severe and adverse health and  
24 environmental impacts on our community. And yes, we  
25 realize they may not even be aware of the proposed CN

1 intermodal planned for Milton, Ontario.

2 All CN shareholders' profits will come  
3 at an immeasurable cost to our community. With this  
4 proposed development, countless numbers of people in  
5 Halton Region will forever suffer the negative  
6 environmental impacts this industrial development will  
7 bring. And not only for today, it will carry into our  
8 future through long-lasting and cumulative effects  
9 which we cannot even begin to measure.

10 Unfortunately, we also live in a time  
11 of greed, where the only thing that seems to matter is  
12 the company's bottom line.

13 Rail companies hide behind federal  
14 policies. Policies that need to be thoroughly  
15 examined and changed for the benefit of everyone  
16 involved. If only CN would take more responsibility  
17 and look at the big picture to openly acknowledge  
18 this, make changes and rebrand to be true, responsible  
19 corporate citizens who are sincerely interested in  
20 their impact. Imagine how this attitude shift would  
21 open up public perception and entice the public to  
22 invite more rail expansion in all areas.

23 A mission statement from the Bill and  
24 Melinda Gates Foundation states, and I quote, "inspire  
25 people to take action." As Milton R.A.I.L. we did

1 just that. In early 2001 we had a goal to stop the  
2 project, change the *Canadian Transportation Act*,  
3 inform Halton Region and our Town of Milton and of  
4 course, members of our community and surrounding  
5 areas, about the potential impacts this project would  
6 bring.

7 Our vision continues. And we aim to  
8 preserve the official plan of the regional  
9 municipality of Halton and the Town of Milton. We  
10 support our elected officials to continue to build a  
11 better community, one with promise for new and  
12 existing families and businesses. A healthy, safe and  
13 growing community. One where our future is not  
14 threatened.

15 An inspired and vibrant community, one  
16 where all people can live, work, play, grow, explore  
17 and learn. One without an intermodal terminal in the  
18 proposed location.

19 If I may borrow from the Bill and  
20 Melinda Gates Foundation, "All lives have equal value  
21 and are impatient optimists working to reduce  
22 inequity." CN's intermodal is not more important than  
23 our community. We do not choose to be a sacrifice.  
24 Milton R.A.I.L., knowing the support from individuals  
25 in the community, different community groups,

1 Conservation Halton and the unanimous support of the  
2 Town of Milton, Town of Oakville, City of Burlington,  
3 Halton Hills and the Regional Municipality of Halton  
4 say, we stand strong when we say this is the wrong  
5 location.

6           There are responsible and yes, perhaps  
7 more expensive ways to develop this yard and all  
8 future yards. However, we are firm in our belief this  
9 project as it's being presented to us is not the way  
10 to move forward. We respectfully ask the Panel and CN  
11 to step back and stop before taking action to move  
12 forward with this project, as it's -- if -- sorry,  
13 once begun there will be no turning back.

14           We ask this not only as Milton  
15 residents affected by intermodal lines, but for our  
16 children and the many generations to come. In  
17 reality, we will pay for this in countless ways, but  
18 our children and their children will forever suffer  
19 the negative consequences.

20           CN, we insist accountability and  
21 responsibility come before your profit. This is the  
22 wrong location choice, and we see this as your choice.  
23 The CN intermodal yard will be successful and highly  
24 profitable in the right location and, with that, you  
25 will gain something you can't possibly buy, nor put a



1 price on; that is, respect, integrity and trust for  
2 future developments, as well as recognition from  
3 Halton citizens and that of future Canadian citizens.  
4 These qualities are each admirable and deserving of a  
5 true and excellent community partner and neighbour.

6 We have -- sorry. We have spoken out  
7 for 18 years -- sorry. Sorry.

8 We have spoken out for 18 years with a  
9 great list of concerns as we -- sorry, that we have  
10 for this project. However -- thank you. Sorry.  
11 However, we cannot state enough our serious concerns  
12 for the cumulative and long-term effects -- shoot --  
13 that this development will bring to Milton. Sorry.  
14 That this development will bring to Milton. Once  
15 begun, there will be no turning back.

16 Thankfully, I'm done. So thank you to  
17 the Panel members for your commitment to this process  
18 and thank you to the CEAA for organizing and managing  
19 this process. Thank you to CN for listening. Shoot.

20 And we ask that you discontinue these  
21 plans and relocate your terminal. Thank you.

22 THE CHAIRPERSON: Ms. Vogel Post,  
23 thank you so much for your presentation.

24 MS. VOGEL POST: Sorry.

25 THE CHAIRPERSON: Absolutely no need

1 to apologize to us. We understand what it must be  
2 like to be sitting at that table with the microphone  
3 and speaking about things that matter deeply to you.  
4 So thank you very much for today and also for your  
5 involvement in this process throughout and for your  
6 friends and associates in Milton R.A.I.L.

7 MS. VOGEL POST: Thank you.

8 THE CHAIRPERSON: So Conservation  
9 Halton, I'd like to invite them forward, please.

10 Good morning.

11 **CLOSING REMARKS**

12 DR. VEALE: Good morning. My name is  
13 Barb Veale and I have Jonathan Pounder with me today.  
14 And on behalf of Conservation Halton, I thank the  
15 Panel for conducting a thorough and fair process and  
16 for providing us with an opportunity to participate in  
17 the environmental assessment of the proposed CN Milton  
18 Logistics Hub Project.

19 Our intention throughout the review  
20 has been to provide the Panel with expertise from both  
21 an on-site and a watershed perspective. Particularly,  
22 we have highlighted issues central to our  
23 responsibilities and expertise such as floodplain and  
24 erosion hazards and watershed management. In these  
25 closing remarks I hope to accomplish two things.

1           First, I will summarize our remaining  
2 concerns with the project as proposed. Specifically,  
3 the project continues to have technical deficiencies.

4           Further, CN's unwillingness to comply  
5 to date with the Conservation Halton review and  
6 approval process creates a regulatory gap with respect  
7 to floodplain and erosion issues.

8           Second, I will provide recommendations  
9 for reducing the uncertainties and impacts associated  
10 with the project as proposed.

11           During the hearing process, CN  
12 satisfied some of the matters outlined in our  
13 correspondence of May 29<sup>th</sup>, 2019. However, we do  
14 continue to have concerns. These centre on floodplain  
15 protection, erosion hazard and watercourse realignment  
16 issues.

17           In our opinion, CN has not adequately  
18 demonstrated that the project will not cause  
19 significant adverse environmental impacts.  
20 Accordingly, Conservation Halton does not support  
21 approval of the project.

22           We have identified several ongoing  
23 technical deficiencies brought project as outlined in  
24 CN's Environmental Impact Statement, responses to the  
25 Panel 0 information requests and throughout the hearing

1 process. These technical deficiencies include the  
2 four key concerns.

3 First, the project continues to pose  
4 flood risks. Among other concerns, CN's  
5 infrastructure is planned according to flood  
6 modelling, both hydrologic and hydraulic, yet CN has  
7 not shared this modelling with us despite requests to  
8 do so. As the agency tasked with managing flood risk  
9 within this area, we need to review this modelling to  
10 confirm that our requirements have been met and that  
11 the flood risks are not increased.

12 I do want to point out that the  
13 information provided in Undertaking 20 lessens our  
14 concerns about increased flood risk. However, as a  
15 result of CN's reluctance to provide the flood models,  
16 we cannot be certain whether the planned  
17 infrastructure is adequately sized to ensure there are  
18 no adverse flood impacts.

19 In addition, we require the modelling  
20 in order to incorporate it into our watershed-wide  
21 modelling system. Updated models are typically  
22 submitted to us when new land use information is  
23 generated or infrastructure, such as culverts and  
24 stream realignments, are constructed anywhere in our  
25 watershed.

1                   This ensures that our models reflect  
2 the most up to date baseline physical conditions.

3                   Second, the proposed watercourse  
4 realignment will result in the loss of 500 metres of  
5 Indian Creek. Based on the technical work submitted  
6 to the Panel, it is our opinion that CN has not  
7 undertaken a full evaluation of the stream functions,  
8 nor adequately demonstrated that this realignment will  
9 not alter stream functions and processes.

10                   This is concerning, as stream  
11 functions and processes have the potential to increase  
12 erosion or deposition of sediment elsewhere within the  
13 watercourse.

14                   We also disagree with CN's contention  
15 that the proposed works will adequately offset the  
16 loss of fish habitat associated with this realignment.  
17 Specifically, the proposed compensation will not  
18 provide fish habitat that balances the losses proposed  
19 by the project. For example, the use of the remnant  
20 watercourse without regular flow will not function as  
21 direct fish habitat.

22                   Third, CN has not demonstrated that  
23 the proposed design of Tributary A will allow for  
24 viable passage for terrestrial and aquatic species.  
25 This is particularly the case as it pertains to the

1 design of Tributary A under the main line and pad  
2 sites, through a straightened and channelized section,  
3 and under the truck entrance kiosks. Specifically,  
4 our review concludes that this roughly 450-metre  
5 alteration results in the creation of an ecological  
6 barrier, fragmenting the upstream portions of  
7 Tributary A from the rest of the Indian Creek  
8 watershed.

9                   While we understand there may be  
10 design constraints with the crossings and the train  
11 loadings, there are existing examples of creek  
12 crossings of tracks where ecological conditions are  
13 maintained. Similar options should be explored to  
14 meet both the needs of the environment and CN.

15                   The design of this section of  
16 Tributary A does not implement natural channel design  
17 principles, most particularly between the two large  
18 crossings of the PDA, nor has CN provided details on  
19 how or whether road ecology principles will be  
20 incorporated. Rather, CN has repeatedly cited  
21 engineering constraints to justify the design of the  
22 culverts.

23                   The fragmentation of Tributary A is a  
24 significant adverse environmental effect. Engineering  
25 challenges should not immediately be cause for

1 dismissing this adverse environmental effect.  
2 Instead, CN should be required to base the conceptual  
3 design around the ecological needs of the system  
4 rather than proposing the most expedient engineering  
5 solution with a commitment to mitigate later.

6 And fourth, CN has not adequately  
7 addressed the wetland features in and near the project  
8 development area.

9 As an undertaking during the hearing,  
10 CN provided their assessment of the significance of  
11 the wetlands on site. However, it is our opinion that  
12 this assessment lacked rigour and accuracy under the  
13 Ontario wetlands evaluation system, the result being  
14 an under-valuation of the wetlands and leading to our  
15 conclusion that CN's approach does not demonstrate  
16 adequate mitigation of impacts to wetlands.

17 Accordingly, we cannot support  
18 approval of the project as proposed since, in our  
19 professional opinion, CN has not adequately  
20 demonstrated that there will be no adverse  
21 environmental effects.

22 We are aware that the Panel will  
23 consider suggested conditions of approval should the  
24 project be recommended for approval. Accordingly, we  
25 have detailed a set of conditions in Section F of our

1 written closing remarks to the Panel.

2           These conditions would mitigate some  
3 of the project's impacts to floodplain hazards,  
4 erosion hazards, watercourses and headwater drainage  
5 features, stormwater management, wetlands, significant  
6 wildlife habitat and passage of terrestrial species.  
7 However, without further information and analysis, we  
8 cannot confirm that the implementation of these  
9 conditions will mitigate all adverse environmental  
10 impacts.

11           In addition to technical deficiencies,  
12 we are concerned with CN's reluctance to comply with  
13 our review and approval process. This poses the risk  
14 that unforeseen environmental impacts may result from  
15 the final design of the project.

16           CN maintains the position that the  
17 project is not subject to Conservation Halton's  
18 regulatory authority and the Panel has clearly stated  
19 that it will not consider this matter of jurisdiction,  
20 as it is outside its mandate.

21           We agree that the narrow issue of  
22 jurisdiction is not relevant to the Panel's mandate to  
23 investigate the environmental effects of the project.  
24 However, whether CN complies with Conservation  
25 Halton's floodplain and erosion requirements is



1 relevant to the issue of significant adverse impacts.

2           The absence of Conservation Halton's  
3 regulatory authority will create a regulatory gap with  
4 respect to the project. For example, Conservation  
5 Halton is unique in that flood and erosion hazard  
6 management is central -- is a central part of our  
7 mandate and expertise. If the project is approved,  
8 there is no federal agency with similar expertise and  
9 a local and watershed based perspective.

10           Consequently, if CN is not required to  
11 comply with our requirements, the final design of the  
12 project may result in flood and erosion risks and  
13 unforeseen long-term adverse environmental impacts.

14           To ensure a comprehensive evaluation  
15 and mitigation of the environmental impacts associated  
16 with the proposed project, a clear consultation and  
17 approval arrangement must be in place following the EA  
18 process. And accordingly, we recommend two  
19 alternative solutions.

20           The most effective and efficient  
21 method is that, as a condition of approval, the Panel  
22 require project be subject to the Conservation Halton  
23 review and approval process. Alternatively, the Panel  
24 may require CN and Conservation Halton to enter into  
25 an agreement to formalize their consultation process

1 following the environmental assessment.

2 This is not a novel concept. During  
3 the hearing, both CN and Conservation Halton expressed  
4 their willingness to enter into such an agreement.

5 Conservation Halton's advice for such  
6 an agreement is further described in its closing  
7 remarks to the Panel, its written closing remarks.

8 I believe that these alternative  
9 general conditions provide the best method for  
10 reducing the impacts, risks and uncertainties  
11 associated with the final design of the project.

12 So to conclude, it is our professional  
13 opinion that CN has not adequately demonstrated that  
14 significant adverse environmental effects will not  
15 result from the project as proposed. In addition,  
16 without ongoing involvement by Conservation Halton  
17 following the EA process, the final design of the  
18 project could also result in further unforeseen  
19 adverse impacts.

20 Accordingly, Conservation Halton  
21 cannot support approval of the project.

22 If the project is approved, we submit  
23 that conditions of approval should be imposed to  
24 minimize the significant adverse environmental impacts  
25 of the project. These conditions are stated in

1 Section F of Conservation Halton's written closing  
2 remarks to the Panel dated July 17<sup>th</sup>, 2019.

3 So on behalf of Conservation Halton  
4 and our review team, I thank you for the opportunity  
5 to participate in this environmental assessment  
6 process.

7 THE CHAIRPERSON: Ms. Veale, Mr.  
8 Pounder and your colleagues, thank you very much for  
9 that presentation and thank you very much for your  
10 participation throughout the process. Much  
11 appreciated.

12 DR. VEALE: Thank you.

13 THE CHAIRPERSON: As our next  
14 presenter, which will be Halton Municipalities, will  
15 be presenting for 60 minutes, I'm going to suggest  
16 that we take a break. So I'm going to suggest we come  
17 back at 10:45 and then Halton will begin their  
18 presentation. Thank you.

19 --- Upon recessing at 10:29 a.m. /

20 Suspension à 10 h 29

21 --- Upon resuming at 10:45 a.m. /

22 Reprise à 10 h 45

23 THE CHAIRPERSON: So we will now  
24 resume the session, and our next presenter is Halton  
25 Municipalities.

1 Mr. Benson. Good morning.

2 **CLOSING REMARKS**

3 MR. BENSON: Good morning, Madam Chair  
4 and members of the Panel. For those of you who have  
5 not joined us previously, my name is Curt Benson, and  
6 I'm the Chief Planning Official for Halton Region. I  
7 am pleased to be back before you this morning to  
8 provide the closing submissions for the Halton  
9 Municipalities.

10 I am joined by Jennifer King to my  
11 left and Rodney Northey to my right, legal counsel to  
12 the Halton Municipalities. Together we will be  
13 providing information to the Panel that summarizes  
14 many of the key points raised by the Halton  
15 Municipalities in relation to the mandate of the  
16 Panel.

17 I first would like to clarify the  
18 nature of the role and participation of the Halton  
19 Municipalities so that there's no confusion on this  
20 point. The Halton Municipalities are five municipal  
21 governments consisting of Halton Region, the regional  
22 or upper tier municipal government, and the four local  
23 municipalities of Burlington, Oakville, Halton Hills  
24 and Milton.

25 Each of these municipalities has

1 statutory responsibilities and regulate matters of  
2 public interest in accordance with provincial statute.  
3 This includes matters that regulate a whole host of  
4 things like changes to the environment, land use, site  
5 alteration, aspects of health, safety, access, fiscal  
6 health, sustainability, among many others.

7 The Municipality conducts its business  
8 through democratically-elected councils that represent  
9 and serve the community and are responsible for a wide  
10 range of services that touch on all aspects of the  
11 lives of our residents and businesses.

12 Many of the mayors and councillors are  
13 and have been observing this proceeding with great  
14 interest. And I do note for the Panel's attention, we  
15 are joined here today by a few of our regional  
16 councillors, including Councillors Bentivegna, Best,  
17 Cluett, and Mayor Krantz. And my apologies if I'm  
18 missing one of the councillors.

19 Under provincial statute,  
20 municipalities conduct their business by resolution  
21 and by by-laws, and the elected councils of all five  
22 municipalities, in recognition of the significance of  
23 this proposal, have endorsed a resolution supporting  
24 the submission filed by the Halton Municipalities on  
25 May 29<sup>th</sup> together with the support for the findings

1 that this project is likely to cause significant  
2 adverse environmental effects.

3 The resolutions filed by each Halton  
4 municipality also support the May 29<sup>th</sup> submissions as  
5 accurately setting out the interests of the localities  
6 for the purposes of the section 98 approval under the  
7 *Canada Transportation Act*.

8 The interest of the localities is an  
9 important point, as it is central to the mandate of  
10 this Panel to address under the CEEA process.

11 What the Panel has heard from CN is  
12 that the interests of the localities have been  
13 considered. CN has consistently not respected the  
14 legitimate roles and responsibilities of the  
15 municipalities in protecting the interests of our  
16 communities. In their submissions, they have  
17 characterized the municipalities and our experts'  
18 participation in this proceeding as advocacy.

19 Respectfully, Madam Chair, we have a  
20 statutory duty that's affected by this project that CN  
21 is ignoring. It is essential that the Panel  
22 understands these responsibilities and concerns, as we  
23 fundamentally disagree with the characterization of  
24 this as advocacy.

25 Further, we continue to assert to this

1 Panel that the requirements of the CTA for railway  
2 companies is to undertake consultations with the  
3 localities with a view to developing collaborative  
4 measures to address the relevant issues raised. CN  
5 has not demonstrated that it has satisfactorily met  
6 this test.

7 I want to turn to the relationship of  
8 the *CEAA* framework and the land use planning and  
9 decision-making framework that applies to the Halton  
10 Municipalities.

11 *CEAA* at its heart is a planning  
12 statute. Environmental assessment in its simplest  
13 form is a planning tool that forms an integral  
14 component of sound decision-making. The EIS  
15 guidelines for this project recognize this reality as  
16 a guiding principle. Integral to planning is the  
17 consideration of the potential consequences for  
18 communities' livelihood, health and other social  
19 matters from environmental change.

20 *CEAA* planning considers the long-term  
21 impacts of development from a multitude of  
22 perspectives with two central goals; the promotion of  
23 sustainable development, and the protection of the  
24 environment and human health.

25 According to the EIS guidelines,

1 environmental assessment is a planning tool to ensure  
2 that projects are considered in a careful and  
3 precautionary manner in order to avoid or mitigate  
4 possible environmental effects and to encourage  
5 decision-makers to take actions that promote  
6 sustainable development.

7           The regional official plan also  
8 contains similar objectives focused on sustainable  
9 development and protection of the environment to human  
10 health. These goals are central to Ontario land use  
11 planning under the *Planning Act*.

12           Under Ontario law and policy, all five  
13 Halton Municipalities are planning authorities tasked  
14 with advancing sustainable development and  
15 implementing planning that broadly and cooperatively  
16 applies for all projects and development within their  
17 boundaries.

18           Based on key principles,  
19 sustainability focuses on health and environmental  
20 protection and uses the precautionary approach. These  
21 considerations are represented at every step of the  
22 decision-making chain of growth planning framework in  
23 Halton.

24           You will recall that -- the  
25 decision-making chain that was introduced by Ms. De



1 Angelis on July 10<sup>th</sup>. I will be speaking more to that  
2 decision-making chain a bit later in my presentation.

3 I now want to highlight for the Panel  
4 in relation to the EIS guidelines this notion of  
5 valued components.

6 According to the EIS guidelines, the  
7 final list of valued components to be presented in the  
8 EIS will be complete according to the evolution and  
9 design of the project and reflect the knowledge  
10 acquired on the environment through public  
11 consultation and Aboriginal engagement. The list of  
12 valued components in this regard is not closed, as CN  
13 has claimed as a part of its submission it is.

14 The Halton Municipalities have long  
15 held that there are several valued components and take  
16 a broad view consistent with the precautionary  
17 principle and to appropriately characterize the  
18 effects likely from this project.

19 The Halton Municipalities filed  
20 information on VCs in December of 2016. Since filing  
21 the 2016 brief, we have heard no objection or comments  
22 from CN on this approach until April this year.

23 Regardless of their specific position  
24 on land use, CN did not undertake a fulsome assessment  
25 of land use impacts. It limits its assessment of

1 socio-economic effects to two VCs.

2 Similarly, during the hearing session,  
3 there was a question from you, Madam Chair, on this  
4 notion of a land use VC and how the effects to plans  
5 and planning might result from change to air, soil,  
6 water or natural environment. Over the course of the  
7 past three years, in response, the Halton  
8 Municipalities have made submissions on the scope of  
9 this environmental assessment and the environmental  
10 effects that should be considered.

11 As a part of the most recent  
12 submissions filed on May 29<sup>th</sup> we deal with *CEAA* and  
13 the environmental effects under sections 5(2) in both  
14 the December 2016 brief as well as the April 2019  
15 sufficiency brief, particularly the appendix that is  
16 attached to that brief.

17 Land use is a part of the *CEAA*  
18 framework as paragraph 5(2)(a) of *CEAA* is about  
19 changes to the environment that are not set out in  
20 sections 5(1)(a) or (b). The changes set out in  
21 5(1)(a) and (b) are quite narrow and refer to changes  
22 on fish and fish habit, aquatic species at risk and  
23 migratory birds and changes to federal lands or that  
24 cross provincial or international borders.

25 But looking at the definition of

1 environment, the project proposes numerous changes to  
2 the environment that are not addressed by sections  
3 5(1)(a) or (b). These include changes to land, air  
4 and water and changes to terrestrial species other  
5 than migratory birds.

6 Paragraph 5(2)(b) is about effects  
7 other than effects set out in section 5(1)(c) to  
8 Aboriginal peoples. So in terms -- its terms broadly  
9 reference effects on health and socio-economic  
10 conditions and physical and cultural heritage and  
11 structure sites or things having heritage or  
12 architectural significance.

13 So most basically, land use is a part  
14 of this framework because the project proposes changes  
15 to land within sections 5(2)(a). And these changes  
16 will have effects on the health and socio-economic  
17 conditions, including land use by persons other than  
18 Aboriginal peoples.

19 So overall, our review of the on-site  
20 effects on land use has focused on agricultural land  
21 use and employment land use, and our review of the  
22 project's off-site effects on land use has considered  
23 residential land use, off-site agricultural and  
24 employment land uses and transportation land uses.

25 You have also heard from the Halton

1 Municipalities about the importance of planning and  
2 official plans. We believe that these plans are  
3 central to the assessment of the significance of  
4 effects because they provide standards relevant to  
5 assessing both project effects and cumulative effects  
6 and because of the alignment of the official plans in  
7 assessing effects in a cumulative fashion under  
8 objectives that similarly focus on sustainability, the  
9 protection of the environment and human health.

10 I will now turn it over to Ms. King,  
11 who will talk a little bit about specific effects on  
12 residential land use.

13 MS. KING: Thank you, Madam Chair and  
14 Panel members.

15 Before we talk about effects, it's  
16 important to have a look at the scope of the project  
17 being assessed. The Halton Municipalities thought  
18 that the scope of the project was clear throughout the  
19 environmental assessment. However, during the course  
20 of the hearing, CN has attempted to change the scope,  
21 in particular, the geographic extent of the  
22 facility -- or the geographic extent of the operating  
23 facility.

24 With respect to the project area, the  
25 EIS guidelines required the proponent to describe the

1 spatial boundaries to be used in assessing the  
2 potential adverse environmental effects and to provide  
3 rationales for the boundary.

4 In CN's 2015 EIS, it defined the  
5 boundaries for all VCs as the project development  
6 area, 400 acres, and that's at Section 6.2.4, page 120  
7 of the EIS.

8 CN also consistently and repeatedly  
9 described the footprint of the proposed terminal as  
10 400 acres, at least prior to the commencement of the  
11 hearing. For example, in document number 547, they  
12 describe the terminal footprint as 400 acres.

13 Part 2 of Halton Municipalities'  
14 written closing remarks demonstrate that, based on  
15 CN's own submissions and its project description, the  
16 CTA application and the EIS, the yard tracks extend  
17 north of Britannia and these yard tracks support the  
18 intermodal operation and are part of the railyard.

19 The very first time CN claimed the  
20 proposed terminal footprint was less than 400 acres  
21 was during the hearing on June 25<sup>th</sup> when Mr. Reynolds  
22 claimed in a question to Mr. Vickerman that the  
23 operating area of the terminal was 150 acres.

24 Despite undertaking to confirm how  
25 they made this calculation within a day, it took CN

1 eight days to provide an answer. And in their answer,  
2 for the first time, they attempt to limit the terminal  
3 working area to south of Britannia Road.

4 However CN has attempted to redefine  
5 the area of the facility during this hearing, what  
6 matters when looking at the effects of the project on  
7 residents is what CN is doing and where during the  
8 operation of the proposed terminal.

9 It is clear from CN's own evidence in  
10 this environmental assessment that the characteristics  
11 and physical effects of the terminal railyard  
12 operations extend north to Derry Road, and these  
13 operations have different effects than the passing  
14 train on a main line.

15 As one example, if you take CN's  
16 submissions on noise effects, it is clear that  
17 activities necessary to the operation of the terminal  
18 or railyard as opposed to passing trains on the main  
19 line extend all the way to Derry Road, including  
20 activities that generate noise and other effects  
21 different from and greater than those generated by a  
22 passing train.

23 I have a few references. Figure 4 of  
24 the EIS Appendix 10 shows intermodal yard noise  
25 sources along the entire PDA during terminal

1 operations. CN's presentation on noise effects at  
2 page -- at slide 8 to 10 identifies noise receivers  
3 all the way up to Derry Road. And there's a  
4 discussion on the transcript at pages 2540 to 2551  
5 where CN's expert acknowledged that the operation of  
6 the modal facility requires idling in the area south  
7 of Derry Road and movement of four inbound and  
8 outbound trains, doubling over of two trains per day,  
9 and stopping and starting. These are all new sources  
10 of noise, separate from the existing use of the main  
11 line.

12 And another important element of the  
13 scope of the proposed project is its permanence. The  
14 project is not limited to the next 10 or 20 years. CN  
15 has no plans to decommission the project. The project  
16 is assessed in this assessment as permanent and the  
17 effects are long term, well beyond 20 years.

18 The issue of container capacity has  
19 been raised throughout this hearing. And in its  
20 written submissions Halton Municipalities addresses  
21 CN's inconsistent positions related to expected  
22 container volumes, Southern Ontario demand and the  
23 capacity at BIT. Importantly, CN has not limited the  
24 scope of the project at 450,000 containers. Rather,  
25 as set out in paragraph 6 of the written submissions,

1 closing submissions, CN's stated position for MIT is  
2 to address increasing demand for intermodal rail  
3 capacity in the GTHA. Nowhere does CN say it cannot  
4 or will not increase capacity at MIT if the demand was  
5 there. There is no physical limit on capacity.

6 So CN's own position on effects as set  
7 out in its EIS is based on a best case scenario. If  
8 the capacity increases the effects on many VCs would  
9 also increase. That said, the Halton Municipalities  
10 and its experts considered the impact of the project  
11 based on the 450,000-container scenario. Halton  
12 Municipalities' written closing remarks present the  
13 Halton Municipalities findings on significance of  
14 adverse environmental effects under three categories.  
15 Social or effects on residents; economic; and  
16 environmental. I will spend a few minutes on the  
17 social category.

18 The evidence before the Panel  
19 establishes that the project will harm the more than  
20 30,000 residents who live and will live within 1,000  
21 metres of the proposed facility, as well as the  
22 residents who will work, study and play within 1,000  
23 metres of the facility. Many others will also be  
24 impacted by the trucks using the haul routes for the  
25 project to the highways.



1                   A key Ontario standard related to  
2           impact on residents and emissions of contaminants, is  
3           section 14 of the *Environmental Protection Act*, which  
4           prohibits the emission of contaminants if the  
5           discharge causes, or may cause, adverse effects. For  
6           example, harm to the health of any person, material  
7           discomfort to any person and any interference with the  
8           use and enjoyment of property. This standard applies  
9           despite compliance with any other legal standard.

10                   The courts have confirmed that this  
11           standard applies to railways, and even railway line  
12           right-of-ways. And in the 1995 decision of the  
13           Supreme Court, which is referenced at paragraph 73 of  
14           Halton Municipalities' written closing remarks, the  
15           Supreme Court of Canada -- sorry. The Canada Pacific  
16           made an argument that it was exempted from this  
17           provision of the EPA while it was maintaining its  
18           right-of-way.

19                   In that case, CP conducted controlled  
20           burns of dry grass and weeds on its railway  
21           right-of-way, to clear the right-of-way of combustible  
22           material which posed a potential fire hazard. The  
23           smoke was injurious to the health and property of  
24           several residents. The Supreme Court confirmed that  
25           that provision constitutionally applies to the railway

1 when maintaining its right-of-way.

2 CN also criticizes Halton  
3 Municipalities' reliance on standards in its closing  
4 submissions, claiming many of the standards proposed  
5 by Halton Municipalities in their brief do not  
6 comprise benchmarks that can be used for the  
7 determination of significance because, for example,  
8 they prohibit development absent certain studies, or  
9 the permits have not yet been determined to apply to  
10 the project. CN submits the focus of *CEAA 2012* review  
11 is on environmental effects, not compliance with these  
12 regimes.

13 If we look at section 14 of the EPA,  
14 CN doesn't rely on that standard in its EIS. But the  
15 Supreme Court of Canada in the same case found that  
16 this provision is not vague, but rather is clear and  
17 rejected CP's allegation in that case that the  
18 provision standardless sweep, and you'll find that at  
19 paragraph 51. Section 14 then is a clear  
20 environmental standard that applies to this project  
21 and it is focused on effects.

22 So using the methodology of federal EA  
23 as required by the EIS guidelines, and based on its  
24 experts evidence and the other evidence before the  
25 Panel, the Halton Municipalities conclude that there

1 will be five significant adverse environmental effects  
2 on Milton residents, as set out in our written  
3 remarks. And before I make a few remarks on the  
4 effects on air quality, ambient noise, and the  
5 combined effects on residents, I have a further  
6 comment to add to Mr. Benson's discussion of valued  
7 components; or CN's criticisms of Halton  
8 Municipalities' valued components.

9           Each of these identified effects on  
10 Milton residents are directly relevant to the Panel  
11 mandate as described in the EIS guidelines. These  
12 environmental effects, health, noise, and land use,  
13 are all identified in the EIS guidelines.

14           So with respect to air and health. I  
15 won't repeat the submissions in our written document,  
16 but I will say with respect to cancer risk, both  
17 Health Canada and Halton Municipalities found that CN  
18 did not sufficiently assess increased cancer risk.  
19 Health Canada made its concerns clear and requested  
20 that CN do a quantitative assessment or a robust  
21 qualitative assessment of the increased cancer risk.  
22 CN refused to quantify the risk. Based on CN's own  
23 air emission numbers, Dr. Thurston, Halton  
24 Municipalities expert on epidemiology for air  
25 pollution health effects, found that there is a

1 quantifiable increase in cancer risk.

2 I note that CN in their written  
3 submissions at paragraph 19 criticizing Halton  
4 Municipalities' experts for sometimes both finding  
5 that CN's information was insufficient, but then also  
6 finding significant adverse environmental effects.

7 Dr. Thurston's approach is an example  
8 of what Halton Municipalities experts did when CN  
9 refused to provide information that was requested.  
10 Dr. Thurston conservatively relied on CN's numbers and  
11 found a significant affect. And in other cases, where  
12 possible, the Halton Municipalities conducted its own  
13 model and analysis. For example, with traffic.

14 Another significant limitation of CN's  
15 approach to air quality and human health is that CN  
16 assessed cancer risk of contaminants of potential  
17 concern. They did not quantitatively assess the other  
18 adverse health effects. Such as, for example, the  
19 pyramid of PM<sub>10</sub> impacts published by Ontario in 1999,  
20 which recognizes a number of other health effects  
21 including premature mortality, hospital admissions,  
22 asthma and acute respiratory symptoms.

23 Dr. Thurston opined that the  
24 anticipated levels of PM<sub>2.5</sub> would translate to a 1.7  
25 percent increase in residents' lifetime risk of death

1 from heart attack and 3,2 new asthma cases per 1,000  
2 local child residents between 10 to 14 years of age.

3 The assessed likely health impacts of  
4 the proposed facility are not mitigable. In its  
5 closing submissions CN relies on, for example -- and  
6 this is CN's word, "it hopes" that it's recent  
7 investments in electric trucks will lead to further  
8 electrification of the short haul fleet at paragraph  
9 631, and that its acquisition of tier four locomotives  
10 and use of tier four reach stackers would also reduce  
11 emissions; but without quantifying the reductions in  
12 emissions that it would have at this particular  
13 facility.

14 And during the hearing Mr. Lerner  
15 could not answer how tier four locomotives are  
16 allocated throughout the network, and that's at page  
17 2209 of the transcript.

18 CN's May 29 submissions introduced for  
19 the first time, after more than 4 years, and after the  
20 expiry of deadlines for filing relevant information,  
21 general and nonspecific mitigation measures that it  
22 claims will decrease PM<sub>2.5</sub> by 50 percent. CN provided  
23 no evidence to support this claimed effectiveness.  
24 These measures do not meet the CEEA agency test for  
25 mitigation to prevent a finding of SAE. I will refer

1 to you part five of Halton Municipalities submissions,  
2 in particular, hopes for future measures are not  
3 mitigation measures. Mitigation must be part of a  
4 concrete plan capable of implementation and objective  
5 measurement during the environmental assessment.

6 Turning to noise. CN's assessment of  
7 noise hides the true impact on residents. CN did not  
8 do an hourly assessment of noise, which Halton  
9 Municipalities expert, Mr. Penton, found that CN is  
10 required to do under a number of standards. Health  
11 Canada confirmed in the hearing that CN failed to do a  
12 proper night-time sleep assessment as required. And -  
13 however, CN takes the position in its closing written  
14 submission that it did complete a sufficient  
15 night-time sleep assessment. And Halton  
16 Municipalities submit that this Panel is aware that  
17 these statements in the closing submissions is  
18 inconsistent with the discussion on the transcript.  
19 IR-4.78 is not a proper night-time sleep assessment  
20 study.

21 CN's statement in its closing  
22 submissions that it will complete further work later,  
23 again is no answer. In the words of the CEAA  
24 representative, these further studies cannot serve as  
25 mitigation measures.

1 CN's closing submissions raise a  
2 number of criticisms of Mr. Penton's evidence. And  
3 Halton Municipalities note that Mr. Penton never had  
4 an opportunity to respond to these criticisms.  
5 Consistent with CN's approach at the hearing, they  
6 failed to ask any questions of him when he was present  
7 at the hearing.

8 And finally, turning to combined  
9 effects. While the projects effects on air quality  
10 health and noise are significant on their own, due to  
11 the project's proximity to residents, the project will  
12 cause combined effects, including -- if you put  
13 together the night-time effects including light  
14 levels, residential land use and quality of life, us  
15 as already described by Milton Says No and in our  
16 submissions -- in our written submissions.

17 This facility is different than a rail  
18 main line, as we have already discussed. There are  
19 different activities and different effects. This  
20 difference is also recognized in the guidelines for  
21 new developments in proximity to railway operations,  
22 and this document has been discussed at the hearing  
23 and is found in document 880, at page 50 of the  
24 Panel's pages. And it can also be found at IR-7.1-1.  
25 The 2013 version of these guidelines were presented by

1 Sean Finn of CN, who was the Proximity Co-chair of the  
2 FCMRAC initiative. The initiative was also initiated  
3 and approved through a steering committee which  
4 includes a number of representatives from CN.

5 These guidelines since 2004  
6 distinguish between pass-by trains and rail yard  
7 activities. For example, at pages 19 of the 2013  
8 version, the guidelines indicate that noise from pass  
9 by trains and noise from rail yard activities are  
10 different.

11 The guidelines also recognize the  
12 challenges associated with new residential development  
13 in the context of a railway environment, as safety,  
14 noise and vibration issues become more significant.  
15 At page 20. The standard recommended building  
16 setbacks for new residential development in proximity  
17 to railway operations, set out at page 27, is 300  
18 metres for a freight rail yard and 30 metres for a  
19 main line. The recommended minimum noise influence  
20 areas to be considered for railway corridors when  
21 undertaking noise studies is 1,000 metres for freight  
22 rail yards and 300 metres for principal main lines.

23 This concludes my oral remarks on  
24 social impacts to residents and I will hand the mic  
25 back to Mr. Benson.



1                   MR. BENSON: Thank you. Madam Chair  
2 through the hearing we highlighted for the Panel the  
3 importance of planning and the integrated and careful  
4 approach that Halton has to planning. I'll touch on a  
5 little bit of this aspect in my next comments.

6                   Developing the Official Plan and  
7 Official Plan updates are not insignificant  
8 undertakings. It involves a disciplined and open  
9 process that includes the preparation of a wide  
10 ranging -- wide ranging array of technical background  
11 studies prepared by experts on topics of public  
12 interest such as protection of the natural  
13 environment, preservation of farm lands, the provision  
14 affordable housing, the expansion of infrastructure to  
15 support new population employment growth and many  
16 others.

17                   It involves extensive public and  
18 agency consultation around the results of the studies.  
19 The analysis of the comments received on these studies  
20 from the public and agencies serve to advance options  
21 that highlight, you know, key policy directions and  
22 implications of those policy directions. That's all  
23 undertaken and open and in a public forum.  
24 Ultimately, it serves to confirm what is important to  
25 the community.

1                   That is the statement of the Official  
2 Plan. It also conforms with certainty how the region  
3 and the area municipalities will grow and develop and  
4 what will be protected in the long term. Regional  
5 Council long made planning decisions and adopted  
6 policies in the Regional OP that represent a careful  
7 and delicate balance between interests expressed by  
8 many diverse parties. The process is transparent and  
9 it must be defensible in concluding that the Official  
10 Plan represents good planning and is in the public  
11 interest.

12                   You will recall the concept of the  
13 chain of decision making that we presented in a  
14 previous presentation. The Regional Official Plan is  
15 the primary document that sets out specific direction  
16 on a series of key plans and activities that provide  
17 certainty on how a municipality delivers costly  
18 infrastructure to service growth, in accordance with  
19 an approved financing plan.

20                   One of the fundamental long-standing  
21 objectives of Regional Council is that recognizing the  
22 significant growth pressures that we are under in  
23 Halton, that growth must pay for growth. The existing  
24 ratepayers must not be burdened with the cost for  
25 growth and infrastructure that is being driven by the

1 development industry.

2 This project represents a significant  
3 disruption to the chain of decision making under  
4 municipal authority. The chain of decision making  
5 which was validated and confirmed with CN's  
6 participation in the sustainable Halton process.  
7 There is no precedent as to what is happening here. I  
8 cannot point to a similar instance where a  
9 municipality is so impacted by a project of this scope  
10 and magnitude, where the legitimate statutory  
11 responsibilities of the municipalities are not being  
12 respected.

13 Information has been filed by CN to  
14 persuade the Panel that there really is no distinction  
15 from what CN is proposing to do with this project, and  
16 say, the development of these lands envisioned by  
17 sustainable Halton for normal employment uses that may  
18 be rail served.

19 CN states in its closing submissions  
20 that the two kinds of industrial rail facilities, rail  
21 served industrial parks and intermodal, are broadly  
22 similar, and when viewed through a basic planning  
23 lens, would be and should be treated largely the same.  
24 CN goes on further to suggest that each would bring a  
25 high volume of goods to the CN lands, require the

1 conversion of acres of agricultural land, attract  
2 related industrial developments and generate truck  
3 traffic. The Halton Municipalities respectfully  
4 disagree with each of these points, and allow me to  
5 elaborate as they are fundamentally different land  
6 uses.

7 The intermodal project as proposed  
8 represents a patently large, broadly homogenous land  
9 use. It involves moving containers from train to  
10 truck and vice versa as the primary land use. There  
11 are some ancillary land uses, like the office and  
12 maintenance activities, but the primary land use is  
13 loading and offloading containers. By comparison, a  
14 rail served industrial park would be comprised of  
15 multiple diverse industrial land uses, taking  
16 advantage of lands in proximity to rail line service.  
17 In many cases, these would promote diversity from an  
18 employment and business opportunity perspective. It  
19 would mean multiple lots, multiple industries, and  
20 multiple opportunities for economic development.

21 These lands are important as they  
22 represent the single largest opportunity in Halton to  
23 develop employment lands that are directly adjacent to  
24 a main line that is not encumbered by, or competing  
25 with, commuter rail.

1                   A development for rail-served  
2     industrial uses as described would bring squarely into  
3     play the Halton Municipalities requirement for  
4     addressing land uses to accommodate employment  
5     forecasts and densities, assessing the development of  
6     a secondary plan that sufficiently separates land uses  
7     in accordance with the land use policies of the PPS  
8     and the Regional OP and the D-6 guidelines; while  
9     ensuring the protection of the natural heritage  
10    system, features and functions, protection of the  
11    agricultural lands; and while studying the  
12    transportation impacts and designing the road network  
13    and accesses accordingly, among other land use  
14    considerations that would be assessed through the  
15    secondary plan process.

16                   This to us represents a clear  
17    distinction between land uses as -- and indicates  
18    precisely how the distinction in the process for how  
19    these things develop will unfold. Even the  
20    Bousfields' report prepared for CN in 2008  
21    acknowledges that implementation of CN's proposed  
22    industrial park intended primarily for direct rail  
23    service uses requires municipally sponsored the  
24    Official Plan amendments, redesignating it to  
25    employment lands, with expand urban area boundary.

1                   As mentioned to the Panel throughout  
2 the public hearing, the Regional Official Plan can  
3 provide the panel with assistance in identifying and  
4 assessing cumulative effects. My May 29<sup>th</sup> submission  
5 provides, in my opinion that the region OP represents  
6 the cumulative effects, or zero sum framework, where  
7 all land in the regional municipality has an  
8 identified planned function. The test for cumulative  
9 effects thus arises where proposed development does  
10 not conform with the Regional Official Plan, and  
11 amending the Regional Official Plan to provide that  
12 conformity will also require changes to other planned,  
13 proposed, or future activities.

14                   The cumulative effect is that  
15 addressing a change for one use of land triggers a  
16 requirement to change other uses of land, or otherwise  
17 change the situation of other users of land. To  
18 illustrate this point relative to the land use VC,  
19 this project will the only provide 130 direct jobs on  
20 these lands which were planned to achieve 1,500 jobs.  
21 The project is land consumptive and with the low  
22 employment density.

23                   In addition, the project will attract  
24 similar types of warehousing and logistics uses by  
25 their nature are land consumptive and low employment

1 density. This will result in a series of cumulative  
2 effects that have not been accounted for by CN. The  
3 effects include, the region in town will not be able  
4 to meet its provincially mandated employment growth  
5 forecasts and densities. In not achieving the  
6 provincially mandated employment growth forecast and  
7 densities, other options will need to be explored, for  
8 example, conversion of lands identified for the  
9 long-term protection of agricultural uses to  
10 employment use flues the next update to the OP.

11 The types of jobs offered by the CN  
12 facility and related uses will attract jobs that are  
13 not well aligned to the educated workforce in the Town  
14 of Milton. The existing planned infrastructure  
15 intended to support the employment area where the  
16 project is located will need to be re-evaluated, as we  
17 will need to confirm that it is appropriately sized to  
18 accommodate the uses.

19 And CN's refusal to pay development  
20 charges will result in greater costs to other land  
21 owners and developers. It's my opinion that these  
22 represent cumulative effects and constitute a  
23 significant adverse environmental effect.

24 Approval of the project will cause a  
25 SAEF on the region's integrated plan for the

1 employment area. In general, the ROP accommodates  
2 most development to 2031. When development such as  
3 the project is not accommodated in the OP it triggers  
4 a need for a Regional Official Plan amendment.

5 This Regional Official Plan amendment,  
6 as I mentioned, will have broader impact on lands and  
7 land uses beyond what can be controlled by CN. The  
8 CEAA and EIS guidelines require identification and  
9 consideration of alternative means of carrying out the  
10 project that are technically and economically  
11 feasible. I want to touch on a couple of aspects of  
12 project alternatives.

13 First dealing with project location,  
14 according to CN the project location was chosen  
15 following a site selection process that identified  
16 potential options for alternative locations, based  
17 largely on criteria established by CN. The Cushman  
18 and Wakefield study commissioned by CN and endorsed by  
19 CN before this Panel included the following criteria  
20 for including or excluding lands. That plans -- or  
21 designated residential use based upon the approved  
22 municipal Official Plans is located within 300 metres  
23 of the corridor. So that means if the location fell  
24 within 300 metres of a planned or designated  
25 residential use, it would be disqualified.



1                   As a regional -- as -- pardon me, as  
2 the review Panel heard through the public hearing  
3 process, this criteria raises some key questions.  
4 First, the project development area for the project is  
5 well within 300 metres of an existing and approved  
6 residential community, therefore CN cannot meet this  
7 criterion as this project location as currently  
8 designed.

9                   CN has confirmed that there will need  
10 to be rail yard tracks installed north of Britannia  
11 Road to enable train movements, to position trains  
12 along pad tracks. The train movements that occur  
13 north of Britannia to position trains along the pad  
14 tracks are different from movements expected on the  
15 main line, and this distinction is important as the  
16 affects from rail yards are considered differently  
17 from rail lines, and there are different planning  
18 approaches when dealing with rail yards.

19                   The 300 metre separation requirement  
20 is consistent with the minimum distance separation  
21 between sensitive land uses and rail yards in  
22 accordance with the provincial D-6 Land Use  
23 Compatibility Guidelines and implements key directions  
24 of the Regional Official Plan and the Provincial  
25 Policy Statement. Separation of incompatible land

1 uses is the most effective way to avoid land use  
2 conflicts from two perspectives. One to prevent  
3 adverse effects from industrial uses, such as noise,  
4 odour, dust, or air emissions on sensitive land uses;  
5 or receptors like people, homes, and schools.

6 And I think equally important, to  
7 ensure operators of industrial type land uses can  
8 operate under normal conditions without being  
9 encumbered by complaints from nearby residents.

10 Separating conflicting land uses is a fundamental and  
11 basic principle of planning. And in my opinion, it is  
12 not been appropriately considered by CN in its site  
13 selection analysis.

14 Based on the above, it's my opinion  
15 that this project does not adhere to the exclusion  
16 criteria as it falls within 300 metres of an existing  
17 and approved residential community.

18 I now want it talk a little bit about  
19 project access points. As we know there is a lot of  
20 discussion around the access on to Britannia Road.  
21 Britannia Road is a controlled access arterial under  
22 the region's jurisdiction. And the region will make a  
23 final determination in regard to whether proposed  
24 access points comply with the region's road access  
25 bylaw and access management guidelines. CN's proposed

1 access point for trucks on Britannia is at a location  
2 east of the existing main line crossing at Britannia  
3 Road. The entrance will be located east of Halton  
4 Region's proposed Britannia Road overpass.

5 Prior to and during this hearing the  
6 Panel received information showing several concerns  
7 with this location. First, CN has not established  
8 that access from First Line, which is a local road, is  
9 not feasible. This is contrary to the bylaw and  
10 requires demonstration that access from local roads is  
11 not feasible before access to an arterial road can be  
12 granted.

13 Second, the proposed truck access  
14 intersection is only 250 metres from the nearest  
15 intersection with first line. This is contrary to the  
16 guidelines that require 300 to 400 metres between full  
17 movement and intersections. Depending on the speed  
18 limit of the roadway, the traffic signal co-ordination  
19 and storage capacity for left-turning vehicles.

20 Third, the proposed access contributes  
21 to existing safety and operational requirements that  
22 encourage unsafe manoeuvres. The proposed full  
23 movement intersection is immediately adjacent to a  
24 road over rail grade separation to the west.

25 Fourth, CN has not demonstrated

1 through adequate analysis the impact on the pedestrian  
2 and cycling environment from the proposed access on  
3 Britannia.

4 Fifth, the access is proposed to  
5 encroach onto lands designated for natural heritage,  
6 given the watercourse and related features and  
7 functions. This location is also outside of the urban  
8 area boundary and encroaches on to land protected for  
9 agricultural uses.

10 CN's information does not address  
11 these concerns and therefore, it's our conclusion that  
12 their proposal for access does not meet the region's  
13 requirements for access.

14 I do have some final comments before  
15 allowing Mr. Northey to provide some concluding  
16 statements. In its closing submission, CN identifies  
17 what it thinks the key substantive themes from the  
18 public hearing were. And I only share this because I  
19 think what we have been attempting to do for the  
20 Panel, is to assist the Panel in fulfilling its  
21 mandate under its charge.

22 It was really the intent of the Halton  
23 Municipalities to bring forward pertinent information  
24 to ensure that the Panel fully understood what the  
25 municipal responsibilities and municipal interests are

1 throughout this process.

2 In reading the CN closing submission,  
3 it feels like the key substantive themes from the  
4 public hearing start with the urgent need for the  
5 Milton Logistics Hub, as to somehow suggest that need  
6 should trump any assessment of environmental effects.  
7 There were significant participation from the freight  
8 industry, from the Chamber of Commerce, speaking about  
9 the economic benefits. The Halton Municipalities feel  
10 quite strongly that through its existing planning  
11 framework, we have an economic development plan in the  
12 Regional Official Plan that highlights our expectation  
13 for how these employment lands will develop.

14 Another interesting point under key  
15 themes was modal shift benefits, with more growth,  
16 more users on the regional road network. We disagree  
17 with that as a key theme. We don't think that this  
18 adequately recognizes the significant shift of taking  
19 trucks off of roads from a macro scale, and applying  
20 them to more localized scale, and what the impacts  
21 are.

22 CN suggests that the project will have  
23 ecosystem benefits. Again, we disagree with this  
24 point, because it's very clear that this project will  
25 remove key components of the natural heritage system.

1 And I think you have heard from the presentation from  
2 Conservation Halton some of the challenges that still  
3 exist resulting from the current project design.

4 They also highlight the fact that the  
5 project puts forward a compatible land use, and I  
6 don't know that I need to spend much more time on that  
7 point, because we did hear a lot about land use  
8 compatibility through this concluding presentation.

9 So now I would like to turn it to Mr.  
10 Northey to provide some concluding remarks.

11 MR. NORTHEY: Thank you, Mr. Benson,  
12 Madam Chair, Members of the Panel. I'm going to cover  
13 just a few topics to make sure in our efforts to get  
14 the closing remarks to the Panel in a timely way, we  
15 have some appendices. And if you try to find out how  
16 the appendices fit with the submissions, I think I  
17 need to provide a little bit of assistance.

18 So I'll just ask you if you turn up  
19 the appendices which we have five, and I know the  
20 Panel chair ruled on two and I'm not going to speak  
21 further of those. Appendix C deals with as the  
22 heading "CN's lack of co-operation undermines Panel's  
23 fact-finding mandate". And in that, Madam Chair, we  
24 simply list a number of detailed concerns and  
25 references to the transcripts, and the hearing

1 process, not covered in our closing marks otherwise,  
2 but just provides some concerns raised by the Halton  
3 Municipalities.

4 So the reason I'm doing this is if you  
5 read the closing remarks only, Madam Chair you might  
6 not know where Appendix C fits and I want to make sure  
7 that it is part of the closing remarks and makes a  
8 very different point than we were covering in our  
9 remarks.

10 So then there are two further  
11 appendices. One is entitled "Reasonableness of  
12 location" and I am going to come back to that. And  
13 the final one is "Alternative methods". And I think  
14 Mr. Benson, Madam Chair, respectfully covered that in  
15 what he just said to you on both the site selection  
16 points and on the issue of the access points. So I'm  
17 not going to go further with Appendix E.

18 But Appendix D, Madam Chair, though  
19 not relevant to this Panel particularly, is relevant  
20 to Mr. McMurray, if Mr. McMurray and the CTA end up  
21 with jurisdiction over this matter. And I just simply  
22 want to say we are very mindful, Madam Chair of the  
23 way the Panel mandate is constructed. We want to say  
24 Appendix D deals with the section -- the section and  
25 the approval, I should put it, under the *Canada*

1     *Transportation Act* if that mandate comes forth and  
2     that's the way it's framed. And I just want to make  
3     clear again it's not tied to our closing remarks to  
4     the Panel, but it is a submission and part of the  
5     record. So that's one part of, I call it, just making  
6     it a little clearer what's happening.

7             A couple of other topics to cover,  
8     then very quickly are the topics of standards. In our  
9     remarks we cover standards in a couple of ways, Madam  
10    Chair, and I'll just say in section 3.14 we introduce  
11    as the framework the reference to standards. And I  
12    know the Chair and the Panel has heard a great deal  
13    and received submissions on standards. The point I  
14    want to make and highlight right now, is one aspect of  
15    that that we are adding to what we said is, how does  
16    the question of standards fit? Where does it fit in  
17    the mandate of the Panel?

18            We know the EIS guidelines direct the  
19    EA and the EIS to deal with standards. But what has  
20    been inconsistently stated -- and we do provide that  
21    in our closing remarks, Madam Chair, is what's the  
22    relationship of standards to this question, the  
23    constitutional question so to speak?

24            And I want to say two things very  
25    clearly, just to make this abundantly clear to the



1 Panel. In our submission, the consideration of  
2 standards is not a constitutional question. There is  
3 nothing preventing the Panel, in its information  
4 gathering role, to consider the standards of other  
5 jurisdictions. And as we say in our closing remarks  
6 quite clearly, CN -- and we provide the examples. CN  
7 itself, in its only EIS, references standards of other  
8 jurisdictions.

9           So the issue then, Madam Chair, is not  
10 a Constitutional principle, it's a question of  
11 diligence and anything else you might apply, but not a  
12 Constitutional question. So what I want to say then,  
13 is in closing on this point, which will tie to the  
14 next point, is there are numerous standards that are  
15 relevant. The fact that the Halton Municipalities  
16 since 2016 have been trying to make the point about  
17 the Regional Official Plan and then more recently, the  
18 other provincial municipal standards beyond that that  
19 are relevant, those have not been addressed but that's  
20 not a Constitutional problem. That's simply a choice  
21 of CN. It hasn't chosen to make those standards  
22 relevant to its review.

23           So that then turns to the next point  
24 which I do want to try to cover and I know, Madam  
25 Chair, the Panel was very interested to hear from the

1 Canadian Environmental Assessment Agency, and  
2 certainly we understand the importance of that  
3 question. But I do respectfully say, on behalf of the  
4 Halton Municipalities, there are some problems with  
5 what occurred and what the Panel received. I  
6 appreciate the Panel may not agree, but I do want to  
7 make the point of where the Halton Municipalities are  
8 on this.

9           So where we are is, on four points as  
10 set out in our closing remarks, quite clearly, at  
11 section 3.15 at page 16, we are completely aligned  
12 with what the CEAA Agency provided to you, Madam  
13 Chair. What we have said though in addition to that  
14 and -- this is where I want to focus at this specific  
15 time, is that there is -- beyond the things recognized  
16 by the CEAA Agency, there is a problem with not fully  
17 integrating what is meant in section 5 and in sections  
18 52 and 53, which is this distinction introduced in the  
19 legislation between a section 5(1) effect and a  
20 section 5(2) effect and consideration.

21           Mr. Benson has elaborated earlier in  
22 these remarks, oral remarks, on 5(2), but I think it  
23 needs to be said, Madam Chair, this is an introduced  
24 concept with *CEAA 2012*.

25           Prior to *CEAA 2012*, all the effects

1 that are similar to what's listed here were under one  
2 banner. And so one might say, Madam Chair, that for  
3 the federal agencies such as CEAA prior to *CEAA 2012*,  
4 it was a standard practice to consider all of the  
5 effects between 5(1) and (2) together as if they're  
6 the same.

7           However, Madam Chair, section 5(2) of  
8 the current Act is perhaps the most complicated  
9 provision in environmental assessment legislation.  
10 And the problem right now is, Madam Chair, nobody has  
11 had to consider it. No Court has had to deal with it  
12 and so we are all sitting here in somewhat of a vacuum  
13 trying to understand what it means.

14           But this is a key point of difference  
15 with CEAA Agency. Their submission to you, Madam  
16 Chair, respectfully, from our position, did not take  
17 into account what section 5(2) says.

18           And respectfully, we, for the Halton  
19 Municipalities, have been making submissions to this  
20 Panel since December of 2016 trying to explain how  
21 section 5(2) of *CEAA* works and how the standards of  
22 the Halton Municipalities apply under that section.

23           So here is where this lands. There  
24 are two things said, Madam Chair, in the Halton  
25 Municipalities submissions in May that are dealing

1 with the 5(2) problem.

2 The first problem is, how does 5(2)  
3 relate to the relationship of the CEAA Agency and the  
4 Minister and any other federal department that has  
5 regulatory responsibilities over a project.

6 There are two different situations.  
7 One is a situation involving Department of Fisheries  
8 and Oceans, and one is a situation involving some  
9 agency like the Canadian Transportation Agency.

10 It cannot be the case, Madam Chair,  
11 that the deliberate reference in 5(2) to that  
12 regulatory authority is irrelevant to the scope and  
13 how to deal with things under this Act. I don't  
14 believe, respectfully, the submissions of the CEAA  
15 Agency address that problem.

16 And I just say, Madam Chair, if one is  
17 familiar with federal EA as Madam Chair is and the  
18 Panel members are, there are a number of issues  
19 between the federal family with how various agencies  
20 do various things.

21 In my respectful submission, 5(2) is  
22 drawing a line about what the Minister can do under  
23 the statute and how the Minister must work with those  
24 other federal agencies.

25 However, that is relevant to some of

1 the permits and approvals that may be relevant to CN  
2 and so we raise it and raised it May 29<sup>th</sup>. But the  
3 bigger problem, Madam Chair, is in our very respectful  
4 submission here, 5(2) is a constitutional provision as  
5 well. And it relies on the following point which I  
6 started with.

7           There is in regard to 5(2) a  
8 requirement to understand what a federal agency or  
9 federal department must consider or may consider  
10 relevant, and I referenced the case, a fundamental  
11 case, in our submissions. What's relevant but, Madam  
12 Chair, what is relevant as a consideration does not  
13 itself bestow authority to regulate it. There is a  
14 fundamental distinction between being able to consider  
15 something and regulate it. And where that lands,  
16 Madam Chair, is this.

17           The Halton Municipalities have  
18 provided this Panel with extensive information. We  
19 regard that information and your mandate is very broad  
20 to accept information. But how that affects  
21 mitigation and conditions, respectfully, is a  
22 different problem. There are limits to it and we are  
23 very concerned, Madam Chair, that on the basis of what  
24 the CEAA Agency provided this Panel may head down the  
25 wrong path legally.

1                   We do not believe 5(2) or CEAA changes  
2 the constitutional division of powers and authorizes  
3 the federal Minister or the CEAA Agency to regulate  
4 something of local or private constitutional matter  
5 under the *Constitution*.

6                   I simply leave it there. I know,  
7 Madam Chair, I said during those submissions and  
8 remarks these are legal problems. I simply want to  
9 say we have been trying to wrestle with this with the  
10 Halton Municipalities, and provide assistance to the  
11 Municipalities as legal counsel. It is difficult, but  
12 it doesn't mean there isn't an issue.

13                   Now, the other point is a matter just  
14 to clarify, Madam Chair, is that the relevant  
15 information before you as you would be aware -- I want  
16 to make something quite clear. We have focused the  
17 Halton Municipalities -- the closing remarks are  
18 focused on what is of concern, certainly, and having  
19 regard to the hour available to us today.

20                   I simply want to repeat for the  
21 benefit of the Halton Municipalities to you as well  
22 that the Panel be aware that earlier this year we  
23 filed two major submissions for the Halton  
24 Municipalities on significant adverse environmental  
25 effects. They were documents of the Halton

1 Municipalities filed on occasion by legal offices, but  
2 they are Halton documents.

3           Nothing that we say in the closing  
4 remarks, Madam Chair that's offered today is in any  
5 way to diminish the interests and concerns expressed  
6 in those two documents, which would be the sufficiency  
7 document of April and the May document dealing with  
8 how to deal with significant effects and on the  
9 merits. So those still reflect the concerns and  
10 interests of the municipalities.

11           And my final comment, Madam Chair,  
12 respectfully is this.

13           There has been an unusual feature to  
14 this hearing. And many of us have been parts of other  
15 hearings where witnesses caucus. However, in this  
16 hearing, the Halton Municipalities have seen something  
17 that goes far beyond other hearings, and it's not just  
18 that witnesses caucus. It is the caucus itself.

19           Not today, Madam Chair, conspicuously,  
20 but other than today, throughout this entire hearing,  
21 CN has had a two-row caucus. The first row has been  
22 CN personnel, Mr. Reynolds, Mr. Lerner, Ms. Patterson.  
23 None of those personnel, Madam Chair, appear on CN's  
24 list of expert witnesses.

25           Equally, throughout this hearing, CN

1 has had a second row of at least four additional but  
2 unnamed personnel, usually including at least one  
3 lawyer. And throughout the hearing, identified  
4 experts have at various times been in the first and  
5 second rows of the caucus.

6 Every time this hearing has heard from  
7 CN a request to caucus, this two-row caucus has been  
8 engaged, including any experts that happen to be  
9 before this Panel. It is the two-row caucus that  
10 provides direction on who is to respond from the front  
11 row, experts or CN personnel.

12 Thus, there have been virtually no CN  
13 responses that have come from its experts directly.  
14 They have followed expert participation in the caucus  
15 and caucus direction that the experts should respond.

16 Madam Chair, I am very aware the Panel  
17 has noted concern with the time involved in caucusing.  
18 Very respectfully, Madam Chair, on behalf of the  
19 Halton Municipalities, I observe that the issue of the  
20 caucus goes far beyond a timing question.

21 So respectfully, whatever this Panel  
22 may say in its report, we ask this Panel to address  
23 CN's use of this caucus throughout this hearing and  
24 provide this Panel's views on whether a caucus such as  
25 this contributes to the federal EA process.



1                   That is our final remarks on behalf of  
2 Halton Municipalities, subject to your questions.  
3 Thank you very much for your attention, Madam Chair  
4 and Panelists.

5                   THE CHAIRPERSON: Mr. Benson, Ms.  
6 King, Mr. Northey, thank you very much for your  
7 presentation.

8                   We will now break for lunch. It is  
9 quarter to 12:00, and we will come back at quarter to  
10 1:00 for final remarks from CN.

11                   Thank you.

12 --- Upon recessing at 11:46 a.m. /

13                   Suspension à 11 h 46

14 --- Upon resuming at 12:53 p.m. /

15                   Reprise à 12 h 53

16                   THE CHAIRPERSON: Before we continue  
17 this closing remarks session, the Panel does have a  
18 short statement.

19                   So over the lunch hour, the Panel has  
20 been thinking about Mr. Northey's concerns about the  
21 two-row caucus. I note that at no point during the  
22 hearing did Mr. Northey, other lawyers from Halton  
23 Municipalities or other interested parties raise this  
24 concern.

25                   The timing of this concern is

1       troubling. This is the first we have heard of the  
2       issue today at the very end of Halton Municipalities'  
3       closing remarks.

4                        If Halton Municipalities believed that  
5       this was a serious concern, they should have raised it  
6       earlier. At any time during the last four weeks  
7       Halton Municipalities could have stood up and asked  
8       for additional clarity or identification of CN's  
9       second row or that those individuals be the ones to  
10      respond directly to questions.

11                      Today, the Panel does not wish to  
12      pursue this issue any further. We will address it in  
13      some way in our final report.

14                      So that is the Panel's statement on  
15      that matter. And so now we will move to the final  
16      presentation, which is by the proponent, CN.

17      **CLOSING REMARKS**

18                      MR. LERNER: Madam Chair, members of  
19      the Panel and other interested parties. Thank you for  
20      the opportunity to say a few closing words about our  
21      Milton Logistics Hub proposal.

22                      As a reminder, my name is Mark Lerner,  
23      and I'm a Vice-President at CN and part of our  
24      national leadership team. I have lead responsibility  
25      at CN for the Milton Logistics Hub proposal. I've

1       been working at CN for over 25 years now and have  
2       spent most of my career in intermodal.

3                       I am here today, as I have been  
4       throughout this proceeding, with Darren Reynolds, our  
5       project director, and Luanne Patterson, our senior  
6       environmental assessment manager, whom you already  
7       know.

8                       We are also joined today by Sean Finn,  
9       our Executive Vice-President, Corporate Services, and  
10      behind there a couple rows is Mr. Keith Reardon, our  
11      Senior Vice-President of Intermodal and Automotive.

12                      Madam Chair, I would like to provide a  
13      brief road map of my closing remarks. I will be  
14      dividing my remarks this afternoon into three parts.

15                      The first part will be giving the much  
16      deserved thanks to the many people involved in this  
17      hearing. The second part will be providing highlights  
18      on some of the specific topics that we covered during  
19      the hearing. And the third and final part will be  
20      discussing the proposed mitigation and potential  
21      conditions.

22                      And now, Madam Chair, I'd like to  
23      acknowledge all of the people that have been involved  
24      in this process. Panel members, this environmental  
25      assessment process has involved a tremendous amount of

1 hard work by everyone involved, not least the Panel  
2 and the secretariat. We want to thank you for how you  
3 handled and managed the process, including the long  
4 days we all shared together through this hearing.

5 The process started for CN in 2013, so  
6 that amounts to years' worth of effort. And while CN  
7 has done many EAs, this was our first Panel review.

8 I wanted to say a formal thank you on  
9 the record to the many people that aren't here with us  
10 today who contributed along the way. This project has  
11 been thoroughly studied and evaluated by literally  
12 hundreds of experts in the private sector and in  
13 government. Collectively, that has resulted in a  
14 better understanding for all of us and, we think, a  
15 better project proposal.

16 We also received important input from  
17 many different parties, including local residents and  
18 neighbours, interest groups, Aboriginal communities,  
19 businesses and business organizations as well as  
20 elected officials and municipal administrative staff,  
21 all of which has helped us to identify and address  
22 local interests.

23 So I've never loved saying the  
24 expression it takes a village, but this project has  
25 probably taken a few villages of effort, and we really

1 do appreciate that kind of attention and input.

2 Madam Chair, I now want to turn to the  
3 people that did join us over the last four weeks or  
4 so. I would like to split that large group up into  
5 people whose job it was to be here and those that  
6 volunteered to be here, and first the volunteers.

7 These are the people that took time  
8 off from their busy schedules to sit through some very  
9 long hearing days and, in some cases, densely  
10 technical evidence.

11 We know the process is time consuming  
12 and can be intimidating. And the volunteers  
13 persevered through all that so they could try to learn  
14 more about our project and provide CN and the Panel  
15 their sincere feedback.

16 I want to specifically acknowledge  
17 some of those who spoke at the hearing. Ms. Mott, Ms.  
18 Roberts, Ms. Newman, Ms. Meyer, Mr. Canzona, Mr.  
19 Paquette, Ms. Vogel Post, Ms. Piegsa, Mr. Radisic, Mr.  
20 Ali Khan, Mr. Amer, Mr. Valika, Ms. Fishcer, Ms. Chen,  
21 Mr. Butt and Mr. Soltysik. Thank you for being part  
22 of this process.

23 We understand that this process is  
24 expert heavy, and there is a lot of information to try  
25 to absorb, even for the experts. We did try to gear

1 our presentations so that non-experts would be able to  
2 absorb the basics. That can be difficult on some of  
3 these topics, and we know we didn't always achieve the  
4 kind of clarity we were hoping for.

5 This hearing process where the Panel  
6 and the parties test CN's information and where  
7 competing views are presented can also result in some  
8 confusion for the non-experts watching and listening.  
9 I can personally vouch for that.

10 So for the non-experts in the room  
11 today, I want you to understand that, in CN's view,  
12 any confusion you are feeling or concerns you have  
13 remaining are not your responsibility. They are CN's  
14 responsibility.

15 This is a CN project. We are  
16 proposing that it be located on our land in a  
17 community you and we rightly care about. It is our  
18 job to help you understand it better in all the areas  
19 you may still have questions and it is our job to earn  
20 your trust.

21 I firmly believe that with all the  
22 information we now have available in a form that is  
23 understandable to you, many of your concerns would  
24 diminish. We would not be proposing this project if  
25 we thought otherwise.

1                   Would your concern level drop down to  
2 zero? Well, no, that would not be reasonable. Any  
3 kind of change, any new development near you is worth  
4 paying attention to. And we fully expect you will  
5 want to hold us to task.

6                   We are very confident that, if  
7 approved, this project will not bring negative change  
8 to Milton. But we don't expect all of you to accept  
9 that and we know that addressing those lingering  
10 concerns is our job, not yours.

11                  Going forward, we will continue to do  
12 our best to make information about the project as  
13 accessible as possible as part of CN's commitment to  
14 ongoing discussions with the community about our  
15 operations in Milton.

16                  Now, for the many folks for whom this  
17 hearing was part of your job, and there were a lot of  
18 you, the Panel and the secretariat are obviously at  
19 the top of the list. But there was also many federal  
20 and provincial government agencies that participated  
21 to provide their expert views on the project. There  
22 were also many business community representatives who  
23 took the time to be with us from Milton, other places  
24 in Ontario, from across Canada, and even a few from  
25 the U.S.

1                   We know that many of you took time  
2 away from your families to be here and we know that  
3 all of you had to juggle your summer schedules to  
4 accommodate this evaluation of our project. You  
5 helped make this process thorough and robust. The  
6 result was more effective because of your efforts.

7                   I want to specifically thank the  
8 Halton Municipalities and Conservation Halton for  
9 their thorough participation. And that may seem odd  
10 because they have been opposed to this project at this  
11 location from the outset, so why am I thanking them?  
12 Because they did make this process better. They put  
13 every assertion the CN witnesses made on every subject  
14 to the test.

15                   That made every one of the CN  
16 witnesses work harder to explain the issues. That  
17 made the experts retained by CN dig deeper to  
18 articulate the work that had been done and explain why  
19 it is worthy of the confidence of the Panel and the  
20 public. And that made the federal and provincial  
21 agency witnesses that reviewed CN's work and did not  
22 find fault with it have to explain why.

23                   That also resulted in CN seeking  
24 independent peer reviews in more than one area. And  
25 the end result, in our view, has been a more thorough



1 and robust evaluation, the kind of evaluation that  
2 makes for a better project. And that has provided the  
3 Panel with much more information than they otherwise  
4 might have had to fulfil their mandate.

5 The last thank you, but far from the  
6 least, is to the Mississaugas of the Credit, the Six  
7 Nations of the Grand River and the Huron-Wendat  
8 Nation. Each of them took time to be with us. They  
9 took time to educate us on their culture, their long  
10 history in this part of Canada, and to provide their  
11 perspective on the project and on CN's approach to  
12 partnering with each of them.

13 We were honoured to have them join us  
14 all here. We are honoured to be able to call them our  
15 partners and we are strongly committed to continuing  
16 to work with them on this project and other projects  
17 going forward.

18 As a final word before I turn to the  
19 topics, I want to say, again, that we take the  
20 responsibility of operating on lands in this community  
21 very seriously. We have been here for more than 100  
22 years and we know Milton is a special place. Our  
23 intent is to make it even better.

24 Now, for part two of my remarks, I'll  
25 review the topic highlights.

1                   Madam Chair, you emphasized for us at  
2 the outset of the hearing that this is not an  
3 adversarial process. In that spirit, I have no  
4 intention of trying, through my remarks, to address  
5 all the comments that you have heard from the others  
6 that went before me today. What I will do is hit some  
7 highlights and leave the rest to our detailed written  
8 closing submissions.

9                   In this part, I will cover the  
10 following topics: project need, modal shift, hub  
11 sizing, hub location, land use planning, ecosystem  
12 health, traffic, noise, and accidents and  
13 malfunctions.

14                   But before I address these topics, I  
15 would like to say a few words about the scope of and  
16 approach to the assessment.

17                   The scope of this EA was established  
18 in the EIS guidelines, which were based on input from  
19 the public, all levels of government, Aboriginal  
20 groups, and other stakeholders.

21                   The EIS guidelines set out a broad  
22 range of information requirements, which were further  
23 expanded through the Panel's own information requests.

24                   The EIS guidelines also, importantly,  
25 established a robust framework to guide the assessment

1 based on the requirements of the *Canadian*  
2 *Environmental Assessment Act, 2012* and well-developed  
3 assessment methodologies.

4 A key part of that framework is the  
5 use of valued components upon which the assessment is  
6 focused. Valued components, or VCs, represent the  
7 critical end points of the assessment.

8 Following the framework set out in the  
9 EIS guidelines, the significance of the changes in the  
10 physical environment to air, sound, light, water and  
11 land is evaluated and determined in relation to these  
12 critical end points.

13 In this assessment, we examined a  
14 broad suite of valued components that encompass both  
15 natural and human environment. In particular, we  
16 examined the potential environmental effects that  
17 could result from changes in the environment on fish  
18 and fish habitat, migratory birds, species at risk and  
19 socio-economic conditions, including human health,  
20 safety, services and infrastructure, land use, and  
21 archaeological and cultural heritage.

22 This holistic and integrated approach  
23 enabled a comprehensive assessment to be conducted,  
24 one that considered all of the issues and concerns  
25 that were raised by interested parties throughout this

1 EA.

2 Earlier today, Mr. Benson suggested CN  
3 has not properly respected or considered the many  
4 issues raised in the Halton Municipalities.

5 On the contrary. Throughout this  
6 assessment, CN has given great weight to those issues,  
7 addressing each and every one directly and  
8 comprehensively through an appropriate assessment  
9 framework.

10 Rather than consider the assessment  
11 closed at any time, as Mr. Benson suggested we did, CN  
12 had undertaken numerous additional analyses to address  
13 issues raised by the municipalities and others,  
14 including additional traffic, safety, land use, air  
15 quality, noise and other studies submitted to you.

16 Now, Madam Chair, I will turn to the  
17 topics.

18 The first topic I'll discuss is on why  
19 the Milton Logistics Hub is an important and  
20 much-needed project. Mr. Benson commented that our  
21 recognition of the important issue of need somehow  
22 shows that we think that this particular issue trumps  
23 all others discussed in this proceeding.

24 Madam Chair, I think the fact that we  
25 have provided thousands of pages on our assessment of

1 potential environmental effects reflects the great  
2 weight we have placed on the full range of issues  
3 examined through this proceeding. But need is an  
4 important consideration, and I will turn to that now.

5           One thing I think it is safe to say,  
6 and we all heard loud and clear, was that the supply  
7 chain genuinely needs this project. I described for  
8 you in my opening remarks and presentation how the  
9 Milton Logistics Hub would fit into that supply chain  
10 and why it is a critical link in our national,  
11 provincial and local economies.

12           You heard about that need emphatically  
13 from witnesses from across Canada, Boards of Trade,  
14 Chambers of Commerce, trucking companies, shippers and  
15 ports. And Madam Chair, you now have hundreds of  
16 pages of presentations and transcripts on the record  
17 on this point that make the case much better than I  
18 can in the few minutes I have today.

19           But I do want to pause and focus on  
20 the nature of the need and its urgency, so I'd like to  
21 just remind you of a couple of things some of those  
22 presenters emphasized to you -- for you.

23           First, demand is growing. You heard  
24 Mr. Greer from the Canadian Chamber of Commerce say,  
25 and I quote:

1 "...this project is necessary to  
2 accommodate the economic demands  
3 that will come with projected  
4 population growth of another 3.5  
5 million people living in the GTHA  
6 by 2041. With half of CN's  
7 intermodal traffic already moving  
8 through southern Ontario, it is  
9 crucial for the company to keep  
10 pace with this growth."

11 Mr. Letts of the Brampton Board of  
12 Trade told you, and I quote:

13 "CN intermodal is part of the  
14 solution. It has helped local  
15 companies to compete and has  
16 enhanced Brampton's reputation  
17 as a welcoming, attractive city  
18 for business invest. ...the  
19 bottom line is consumer demand is  
20 not relenting. Population growth  
21 will reliably increase from over  
22 6 million today to 10 million by  
23 2041. The Milton Logistics Hub  
24 can bring crucial goods movement  
25 capacity online faster than other

1 alternatives."

2 The second point, the demand that is  
3 being served produces real economic benefits across  
4 Canada and right here in Ontario. Mr. Wilson from the  
5 Canadian Manufacturers and Exporters explained to the  
6 Panel how significant the manufacturing and exporting  
7 sector is in Canada and how important transportation  
8 infrastructure is to their success. He said:

9 "Through these operations,  
10 manufacturers employ 800,000  
11 Ontarians and support another 1.2  
12 million indirect jobs, tens of  
13 thousands in this region alone."

14 He continued, and I quote:

15 "What was made clear by our  
16 members was that for local  
17 manufacturers to compete within  
18 North America and around the  
19 world, for them to invest and  
20 grow, for them to continue to  
21 employ millions of Ontarians,  
22 they needed efficient and  
23 effective transportation  
24 corridors."

25 And Mr. Friesen from the Port of

1 Prince Rupert explained how the growth in intermodal  
2 created significant jobs and economic activity. He  
3 said:

4 "We move about \$35 billion in  
5 annual trade each year,  
6 contributing about a billion  
7 dollars in economic activity. We  
8 employ just over 3,000 people  
9 directly through port  
10 operations."

11 The third point is delay, which is a  
12 real and present drag on the economy, is already a  
13 problem at Ontario's largest intermodal terminals.  
14 Ms. De Silva of the Toronto Region Board of Trade  
15 explained the cost of congestion to you nationally,  
16 saying:

17 "With CN's Brampton facility  
18 almost at capacity, the CN Milton  
19 Intermodal Hub was identified as  
20 the top project to address our  
21 region's disabling congestion.  
22 Our businesses need more  
23 efficient and reliable supply  
24 chains and distribution access.  
25 The current inefficiency of goods



1 movement across the corridor  
2 costs the corridor an estimated  
3 \$15 billion in lost productivity  
4 annually and pressure is mounting  
5 in the face of unprecedented  
6 growth."

7 You heard Mr. Corsie of the Vancouver  
8 Port Authority explain that impact on one of Canada's  
9 ports he said:

10 "Capacity at CN's existing  
11 intermodal terminal in the GTHA  
12 has become constrained from our  
13 perspective, and is unable to  
14 efficiently accommodate the  
15 increasing demand for containers.  
16 Because the components of the  
17 national supply chain are  
18 interconnected, congestion at  
19 CN's operation in the GTHA  
20 affects the operational  
21 efficiency at the Port of  
22 Vancouver."

23 And finally, delay isn't just a  
24 problem for CN or the truckers that come into a  
25 facility. It's a problem that ripples through the

1 supply chain and stifles economic growth. Mr. Lett's  
2 of the Brampton Board of Trade explained the cost of  
3 congestion and delay to Canadian families coast to  
4 coast. He said in 2009 Metrolinx reported the  
5 congestion in the GTHA cost 6 billion annually in lost  
6 productivity and forecast to rise to 7.8 billion per  
7 annum by 2031, end quote.

8 And finally, you heard Mr. Greer  
9 explain the cost of not building projects like the  
10 Milton Logistics Hub to Canada's international  
11 reputation. He said:

12 "Lastly, I would note that the  
13 success of this project and  
14 others like it also play an  
15 important role in shaping  
16 Canada's economic reputation.  
17 More and more we at the Canadian  
18 Chamber are hearing from  
19 investors seeing Canada as a  
20 nation of builders that is  
21 struggling to get things built.  
22 This inability to have  
23 significant projects proceed  
24 through regulatory processes in a  
25 timely manner is a problem we

1                                    must continue to address."

2                                    So, Madam Chair, if I can sum up, I  
3 would say the importance of and need for this project  
4 is very clear. And it is equally clear that a key  
5 part of that story is that the need is an urgent one.

6                                    It is also important to understand  
7 that although the growth that will deliver the 450,000  
8 additional containers into our network in Southern  
9 Ontario, will extend out as far as 2040, the Milton  
10 Logistics Hub is needed now. Building the project  
11 will not only create that capacity, it will also allow  
12 us to fully modernize our existing facility a bit to  
13 deliver the remaining capacity we need to accommodate  
14 that forecasted growth.

15                                   This proposal has been in the EA  
16 process for years and the evidence before you is that  
17 the supply chain needs additional capacity in this  
18 specific region to address growing demand.

19                                   Madam Chair, this Panel has heard that  
20 the timing of this project is critical. Our request  
21 is that if you do get to the stage where you as a  
22 Panel are considering conditions, please be mindful  
23 that anything that would delay commencement of  
24 operations would have adverse consequences throughout  
25 the supply chain. That would not just be a

1 consequence for CN, but for all of the many businesses  
2 and consumers that depend on that supply chain.

3 The next topic, Madam Chair, is about  
4 modal shift and how it will benefit the airshed.

5 Another very important outcome of the  
6 project is that it will support a fundamental and  
7 important shift in how goods are moved. I mean, of  
8 course, the shift from long haul trucks to rail.  
9 Removing long haul trucks from highway across the  
10 country, in Ontario and locally would benefit the  
11 airshed. That is because intermodal is so much more  
12 efficient than long haul trucks, only a fraction of  
13 the fuel is required to move each container by train.  
14 That results in a reduction in greenhouse gases and  
15 other air contaminants, including particulate matter.

16 You heard that this modal shift is  
17 critical to sustainably managing future growth in the  
18 GTHA. That is true even in the Halton Region and the  
19 Town of Milton, where there will be an airshed benefit  
20 to removing long-haul trucks from the highways.

21 Importantly, you heard that trucks  
22 operating on the highway, as they move along their  
23 long-haul routes, cause more emissions per kilometre  
24 than the same trucks cause operating at slower speeds  
25 necessary to navigate the local regional arterial

1 network.

2                   You also heard a lot about the  
3 extensive work that CN's experts at Stantec have done  
4 to evaluate the potential for local air shed impacts.  
5 And you heard about the effectiveness of the  
6 mitigation that will be in place, including the  
7 significant emission reductions that will be achieved  
8 through the specific mitigation measures proposed.  
9 Those quantified reductions are set out in the  
10 technical report prepared by Stantec and filed with  
11 the Panel on May 29<sup>th</sup>. The independent peer review of  
12 that work found it to be rigorous and thorough.

13                   There was a lot of technically dense  
14 information discussed in the air quality information  
15 section. Here are some important takeaways.

16                   First, the assessment appropriately  
17 considered all important emissions needed for a  
18 complete analysis. The analysis was robust and  
19 conservative.

20                   Second, CN's experts evaluated the  
21 principle individual constituents of diesel, including  
22 benzene, benzo(a)pyrene, NO<sub>2</sub>, and particulate matter,  
23 and determined exposure to emissions is not predicted  
24 to result in changes in human health for both  
25 cancer-related and non-cancer-related effects.

1                   Third, you also heard that the  
2 predicted concentrations of the principal individual  
3 constituents of diesel were in most cases, lower than  
4 the health-based air quality criteria.

5                   Next, CN supplementary relative risk  
6 analysis of diesel exhaust indicated that the local  
7 Milton air shed would be essentially the same from a  
8 health risk perspective as it was before the project.  
9 On the very lowest end of the health risk range in  
10 Southern Ontario.

11                   And you heard that with CN's proposed  
12 mitigation measures, concentrations of air emissions  
13 would be reduced further, which is consistent with the  
14 goals of the Canadian ambient air quality standards or  
15 CAAQS.

16                   Then, CN had all the air and health  
17 analysis conducted by its experts reviewed by  
18 exceptionally qualified peers in the air modelling and  
19 risk assessment fields who provided written and oral  
20 evidence to the Panel. You may recall they agreed  
21 with the conclusions reached by the experts retained  
22 by CN.

23                   Next, the federal and provincial  
24 agencies responsible for airshed management also  
25 reviewed the air assessment, conducted by CN's

1 experts, and were generally satisfied with the work  
2 and its conclusions.

3 And lastly, CN has agreed to Health  
4 Canada's recommendations on proposed mitigation  
5 measures for air and monitoring for NO<sub>2</sub>, PM<sub>2.5</sub>, benzene  
6 and benzo(a)pyrene.

7 And turning back to the diesel exhaust  
8 mixture for a moment, Madam Chair, you heard that all  
9 diesel exhaust mixture assessment is cutting edge.  
10 During the hearing we talked about various ways of  
11 evaluating the health risk of diesel exhaust,  
12 including one controversial methodology described as  
13 the CalePA approach. You heard that approach is not a  
14 requirement in Canada or in Ontario. That is based on  
15 outdated studies and even the lead author of those  
16 studies, Dr. Garshick, advised CalePA against using  
17 them.

18 Instead, we used another approach  
19 suggested by Health Canada, the relative risk  
20 approach. As we explained, the advantages of the  
21 relative risk approach are that it is a  
22 well-recognized methodology, based on much more recent  
23 data and studies and that it produces a comparison  
24 that is easy to understand. In this case, as I noted  
25 earlier, that analysis shows that the risk after the

1 project would be essentially the same as it is now.

2 In summary, Madam Chair, we believe  
3 the information about air quality and human health  
4 that is before the Panel is complete and sufficient to  
5 understand the effects of the project and how they  
6 will be mitigated.

7 But if there is interest in more,  
8 perhaps to add incrementally to our understanding of  
9 the risk profile, then CN would be prepared to have  
10 its experts prepare a robust, qualitative assessment  
11 in consultation with Health Canada. This can be done  
12 as part of the detailed design phase and any learnings  
13 from that would inform the monitoring programs and be  
14 considered with Health Canada at that time.

15 The next topic is about why the Milton  
16 Logistics Hub is the right size. There was a lot of  
17 information put before the Panel on the design  
18 capacity of the Milton Logistics Hub. At the end of  
19 the day, the experts agreed that the stated design  
20 capacity CN had indicated from the outset, a maximum  
21 of 450,000 containers a year, was about right. That  
22 volume was determined through a sophisticated analysis  
23 of the future demand for intermodal capacity on CN's  
24 network in Southern Ontario in the years to come.

25 Despite the Halton Municipalities'



1 claim to the contrary in their written closing  
2 submissions, the footprint of the terminal has not  
3 changed and in fact, has been clearly identified  
4 throughout the environmental assessment process,  
5 including on figures in the EIS and IR responses, as  
6 well as in the CTA application.

7 A clear distinction has been made  
8 between the PDA, which defiance the potential  
9 footprint of disturbance including grading and  
10 restoration and enhancement activities, within which  
11 the terminal components, such as the work pads, tracks  
12 and administration building will be constructed.

13 In response to concerns raised by  
14 Halton Municipalities, we do spend some time  
15 explaining that it would not make good business sense  
16 for CN to increase the throughput of the Milton  
17 Logistics Hub. First, CN's demand analysis showed  
18 there would not be more demand than the 450,000  
19 containers on CN's network in Southern Ontario in the  
20 reasonably foreseeable future, up to at least 2040.

21 Second, it would be entirely  
22 self-defeating to build a facility to serve CN's time  
23 service inland terminal customers and then jam it up  
24 with more containers than it can properly handle. CN  
25 would not be able to meet customer requirements and

1 our customers would have no choice but to go to  
2 another shipping option.

3 And I would like to take a moment to  
4 discuss the marketing forecast. You have very  
5 specific evidence from CN with respect to the  
6 container demand we anticipate. This is our business.  
7 CN has expertise in this kind of forecasting. You  
8 also have from John Martin, an independent evaluation  
9 of the container demand that CN can reasonably expect.  
10 Mr. Martin's expertise is unmatched in this field. So  
11 you have two very strong demand analysis to draw on.

12 You have no demand analysis from  
13 anyone else, including from any of the Halton  
14 witnesses. On the design capacity of this facility,  
15 even Halton's experts agree that the proposed CN  
16 design is for about 450,000 containers. I have noted  
17 that a couple of times -- but I still want to pause on  
18 it. Halton's experts has expressly acknowledged that  
19 the proposal before you is for a facility designed to  
20 process a practical annual maximum throughput of about  
21 450,000 containers. The only debate was that Mr.  
22 Vickerman says that if the demand goes up, then maybe  
23 CN could expand their operations to handle that extra  
24 demand. And, he identified some concepts to show how  
25 that might be achieved through changes in the project

1 design.

2                   You will recall that CN asked Mott  
3 MacDonald to carry out an independent evaluation of  
4 the design capacity in order to test that hypothesis,  
5 and Mott MacDonald used a much more sophisticated tool  
6 to carry out that evaluation, the industry standard  
7 peer reviewed arena model. With many more inputs than  
8 the experts for the Halton Municipalities used.

9                   And the outcome of that evaluation was  
10 that their expert ideas would not work in reality.  
11 The customer and operational demands at an inland rail  
12 facility are entirely different from a sea port.

13                   As one example only, you heard that  
14 increasing container stacking would increase the time  
15 it takes to retrieve a container, which would slow  
16 down truck service time. This would ultimately clog  
17 up the works at the Milton Logistics Hub. If we did  
18 that we wouldn't have any demand left to serve because  
19 those customers would go elsewhere to get the level of  
20 service they need.

21                   You heard customers like J.B. Hunt  
22 clearly say that terminal congestion would cause them  
23 to truck freight over Buffalo to the GTHA, instead of  
24 using intermodal. Hapag-Lloyd, a steamship company,  
25 also mentioned they would truck from the Port of

1 Montreal to Toronto in the event of congestion.

2 The Halton Municipalities suggestions  
3 simply do not take into consideration the customer  
4 needs at an inland intermodal rail facility.

5 Panel members, I am convinced that you  
6 will appreciate that when CN plans to spend hundreds  
7 of millions of dollars on a state of the art facility,  
8 we pay very special attention to sizing it properly,  
9 and we simply cannot run it in a way that would drive  
10 away our customers and undermine our business model.

11 You have heard throughout this process  
12 from the municipalities that they are concerned about  
13 the expansion of this facility beyond its proposed  
14 size. And now, in their latest submission, they are  
15 saying essentially the opposite. That the project is  
16 actually not needed. Madam Chair, Panel members, I  
17 can assure you, the project is needed and it is needed  
18 now. And it has been carefully designed to meet the  
19 expected demand for the foreseeable future.

20 For the next topic, I'll say a few  
21 words on why the Milton Logistics Hub is in the right  
22 place.

23 Throughout this process you have heard  
24 different views on the suitability of the site and  
25 suggestions that the project should be located

1 somewhere else. Unfortunately, the locational  
2 flexibility that is available to many other kinds of  
3 developments, simply isn't available in the rail  
4 business. The new terminal must be along CN's main  
5 line and it must be on lands of sufficient size,  
6 grade, and configuration to enable safe and efficient  
7 movement of container trains into and out of the  
8 terminal. It also must be close to the demand and  
9 have suitable access.

10 The South Milton site meets these  
11 requirements. It also meets other important  
12 objectives of minimizing potential effects on  
13 protected areas. Environmentally sensitive land uses,  
14 species at risk, archaeological and cultural heritage  
15 resource, land use and infrastructure. For the  
16 reasons above we believe that the location of the  
17 proposed project is reasonable.

18 Before I leave this topic, the topic  
19 of location, I want to respond to something that Ms.  
20 King raised this morning. What Ms. King said is,  
21 what's really important is what CN is doing and where.  
22 We agree with that.

23 The conceptual boundary of the  
24 400-acre project development area must not be confused  
25 with where the physical components and activities the

1 project and effects -- its effects, actually will  
2 occur.

3 To be clear, there has been no change  
4 in the scope of the project during this hearing.  
5 Nothing has changed about what CN is proposing to do,  
6 or where, or on what lands. The footprint on the  
7 project, including all the physical components and  
8 physical activities of the project has been consistent  
9 and transparent throughout this assessment. The  
10 assessment has considered all the activities that are  
11 proposed to occur where they are proposed to occur.

12 It became important during the hearing  
13 for the Panel to understand the geographic scope of  
14 terminal operations and that is why we provided the  
15 information to the Panel on the size of the terminal  
16 operating footprint.

17 For the next topic, Madam Chair, I  
18 will discuss why the Milton Logistics Hub is  
19 consistent with local land use planning.

20 One of the requirements of the EIS  
21 guidelines was for CN to consider the potential for  
22 impacts on local land use planning. CN retained  
23 Bousfields to carry out an assessment, and you have  
24 seen the written assessments and heard Mr. Bisset  
25 during the hearing. The bottom line was then

1 Bousfields' opinion the Milton Logistics Hub is  
2 consistent with the local land use planning framework.

3 Mr. Johnson, a planner with more than  
4 40 years' experience in this part of the province was  
5 retained to peer review Bousfield's work and he agreed  
6 with their conclusions. Both Mr. Bisset and Johnson  
7 noted that the CN lands are planned for transition  
8 from agricultural to employment use. And an  
9 industrial rail facility is consistent with the  
10 surrounding uses.

11 And it should not be surprising that  
12 the surrounding use like the Halton Waste Management  
13 Facility and the Burlington Airport are in fact,  
14 compatible rail facility at this location. That use  
15 has been contemplated for CN's lands for nearly 20  
16 years now. Starting in 2001 when CN completed its  
17 land acquisition, we began consulting on our plans for  
18 an industrial rail facility. The region and the town  
19 have known since then that these lands would become a  
20 rail facility one day and they had planned and  
21 approved all of development since then with that in  
22 mind.

23 Mr. Benson was clear that since at  
24 least 2008 he and his integrated planning team  
25 anticipated a major industrial rail facility on CN

1 lands and were planning forward on that basis. The  
2 most recent residential development planned for that  
3 area and the one that would be closest to CN lands,  
4 known as the Boyne survey area, was approved with that  
5 assumption firmly in mind.

6 Briefly on the related subject of  
7 separation distances, the Halton Municipalities  
8 produced numerous drawings that showed a 300 and  
9 1,000-metre lines around the project development area.  
10 As well as along regional arterial roads in some  
11 cases. There has been a lot of discussion on that.  
12 Let me just make three points.

13 First, those distances have been  
14 interpreted and applied inappropriately and do not  
15 consider the different types of activity that will be  
16 occurring in the terminal, compared to within the  
17 existing right-of-way or on regional roads.

18 Second, the 1,000-metre line pertains  
19 to a potential area of influence within which it is  
20 suggested that the potential for effects be  
21 considered. Madam Chair, this comprehensive EA  
22 process has been focused on exactly that. Determining  
23 the potential for impacts from the project and in  
24 fact, for some components such as air quality, our  
25 assessment looked much farther.



1                   And third, nothing in that extensive  
2 assessment has identified any fundamental  
3 incompatibility between the project and the  
4 surrounding land uses, particularly taking into  
5 account the extensive mitigation measures and  
6 management plans proposed by CN.

7                   The Halton Municipalities also spent a  
8 lot of time on the subject of municipal finances and  
9 we all got some exposure to the methodology for  
10 financial projections. The town and the region say  
11 that by building one kind of major goods movement  
12 facility, a rail-served industrial park, they would  
13 have made \$49 million in development charges, because  
14 each of those industry developments to be served by  
15 the railway facility would pay developmental charges.  
16 Then they say if CN builds another kind of major goods  
17 movement facility, an intermodal terminal, the town  
18 and the region will get nothing. A \$49 million  
19 opportunity cost they called it.

20                   Ultimately, Panel members that is a  
21 false comparison. Whether the rail facility attracts  
22 industry to be connected directly by rail to the rail  
23 yard through the rail served industrial park concept,  
24 or to attracts industry next door or a short truck  
25 trip away, the fact is, that major rail infrastructure

1 like this attracts new development. And with it, new  
2 development charges.

3 CN's experts, of course, have  
4 indicated this. You will recall the Cushman and  
5 Wakefield Report that examined the positive effects of  
6 intermodal oriented development or IOD. You have  
7 heard that the intermodal facility will generate many  
8 millions in development charges because of the IOD,  
9 that would reasonably be expected to be attracted to  
10 the town and reasonable as a consequence. And you  
11 heard Ms. Jacob and Mr. Gillezeau, economists with  
12 more than 35 years of experience each, agree that the  
13 project will attract new employment.

14 The 1.1 million square foot DSV  
15 logistics warehouse is an example of that land  
16 development. As acknowledged by the Halton  
17 Municipalities in their closing written submission  
18 this type of rail infrastructure will act as a magnet  
19 for new warehouses nearby. As you heard, the DSV  
20 facility will employ 1,000 people.

21 Ms. Jacob took you through her  
22 calculations to show essentially this, whether you  
23 assumed the CN lands are going to be used as an  
24 intermodal industrial rail facility, producing CN's  
25 estimated range of 1,000 or 2,500 jobs, or a

1 rail-served industrial park rail facility using  
2 Halton's 1,500 best planning estimates, does not make  
3 a difference to the development charge revenue that  
4 could be reasonably expected. Those calculations when  
5 carried out properly all produce estimates in that  
6 same \$20 million range. And that should not come as a  
7 surprise if you boil it down to the basics.

8           The concepts of the two kind of  
9 industrial rail facilities are really not that  
10 different. In both cases, CN would invest millions of  
11 dollars in industrial rail facility, designed to bring  
12 a high volume of goods on to these lands. If it is an  
13 intermodal facility, those goods are brought into the  
14 terminal by train and picked up by truck and often  
15 taken to or dispatched through logistics warehouses  
16 somewhere in the same geographic orbit before they  
17 head to their last mile destination, or vice versa for  
18 exports.

19           If it is a rail-served industrial park  
20 facility, those goods are first moved by train via a  
21 series of individual rail spurs directly to a number  
22 of, say, 20 different industrial locations on CN  
23 lands. In most cases, those locations will be third  
24 party logistics warehouses where the outgoing goods,  
25 for example, will be put on trucks at that point and

1 head off to their last mile destination or, again,  
2 vice versa for exports.

3 So from a municipal finance  
4 perspective, the development charges either come from  
5 the businesses that is are located on CN land or from  
6 the businesses off CN lands but in the same geographic  
7 orbit in the town and region. Either way, a large  
8 industrial rail facility attracts logistics uses, and  
9 those uses result in additional development charge  
10 revenues for the town and the region.

11 Again, this is where Ms. Jacob did the  
12 math for you and showed the expected development  
13 charge revenue should be about the same either way.

14 We believe there will be a net  
15 financial benefit not only here in Milton and the  
16 region, but to the province and the country,  
17 significant economic benefits that are being driven by  
18 several hundreds of millions of dollars of  
19 infrastructure invested entirely funded by CN.

20 And as we heard from the Milton  
21 Chamber of Commerce last week, many supply chain jobs  
22 are, in fact, high tech jobs. They also view this  
23 project as a magnet for advanced manufacturers to  
24 locate in closer to the area, facilitating more jobs  
25 per square acre from those related manufacturing

1 companies.

2 For the next topic, I will take you  
3 through the overall benefits to the ecosystem.

4 The Panel naturally received a lot of  
5 information about the potential for impacts to land  
6 and water, the habitat they support and the fish and  
7 wildlife that relies on that habitat. You heard from  
8 numerous experts retained by CN as well as experts  
9 from federal and provincial agencies, all of whom were  
10 in general agreement that the issues had been well  
11 studied, the actual and potential impacts could be  
12 reasonably -- could reasonably be expected to be well  
13 managed and the proposed mitigations were sensible.

14 The Panel heard in particular there  
15 would be material enhancements to the natural features  
16 at the site, including Indian Creek, that would result  
17 in an overall net benefit to the fish, birds and other  
18 wildlife in the area.

19 With respect to Indian Creek and  
20 Tributary A, you heard that first erosion and  
21 sedimentation will be reduced in providing water  
22 quality.

23 Second, water temperatures will be  
24 maintained or reduced. Third, streams stability,  
25 morphology and resiliency will be improved.

1                   Fourth, more diverse instream aquatic  
2 and adjacent terrestrial habitats will be created.

3                   Fifth, an online pond and dam structure will be  
4 removed to improve fish passage and thermal  
5 conditions.

6                   Sixth, headwater drainage features  
7 undisturbed by the project will remain connected to  
8 watercourses or, if disturbed, their function will be  
9 maintained.

10                   And finally, flood lines will be  
11 maintained or improved.

12                   In designing the project, CN carefully  
13 considered ecosystem objectives for the area,  
14 including those that had been expressed by  
15 Conservation Halton in their study of the Bronte Creek  
16 Watershed within which the project is located. That  
17 study acknowledged the potential for an intermodal  
18 facility to be located on these lands and outlined  
19 specific measures that would improve the environmental  
20 health of the watershed.

21                   As you heard on June 28<sup>th</sup>, CN's  
22 proposed design will address those stated objectives.

23                   The independent federal and provincial  
24 experts that appeared before the Panel on these  
25 subjects did not share the concerns of the experts

1 retained by the Halton Municipalities and Conservation  
2 Halton.

3 Overall, Madam Chair, we believe that  
4 the enhancements that would be carried out as part of  
5 the project would result in a net benefit to the  
6 ecosystem.

7 The next topic is about why traffic  
8 impact from the proposed facility will be low.

9 We spent some time on the topic of  
10 traffic because 800 trucks per day or 1,600 truck  
11 trips per day sounds like a very large number. It  
12 sounds that way because we all imagine when we first  
13 hear those numbers that all the trucks will be there  
14 at once. But, and this is really key, those truck  
15 movements are, in fact, distributed over the course of  
16 a full 24 hours.

17 You might recall that one slide of Mr.  
18 McBride where he showed you a graph with one tall bar,  
19 all 1,600 truck trips at once, then he pressed a  
20 button and that tall bar split into smaller blocks and  
21 cascaded over the 24-hour period to show the  
22 distribution of that volume over the course of a day,  
23 hour by hour.

24 That is when you start to see what  
25 we're really talking about. That is when you heard

1 about the morning and afternoon peak hours, which is  
2 what the traffic experts, including the Halton  
3 Municipalities, used to analyze traffic impact.

4 Those are the busiest hours of the day  
5 on the road network. And in the peak hours, the  
6 terminal will generate no more than 45 trips in and 45  
7 out per hour, or one and a half truck trips per  
8 minute.

9 In fact, as Mr. McBride explained in  
10 his presentation, this facility would be a low-density  
11 traffic generator compared to other employment land  
12 uses. It would generate significantly less in the  
13 peak hours than, for example, a comparatively sized  
14 rail-served industrial park, an office business park,  
15 a retail centre or a distribution centre.

16 Even after accounting for the fact  
17 that the facility would generate truck traffic, the  
18 traffic impact is comparable to that of a Canadian  
19 Tire store and much less than a Costco warehouse  
20 store.

21 If you had never heard that 800 truck  
22 number or 1,600 truck trips number and instead you  
23 heard that it's about the same peak hour traffic  
24 generation as a Canadian Tire store, you probably  
25 wouldn't see this project the same way.



1                   And you saw what that actually looks  
2 like in the video of the traffic model, that clip that  
3 Mr. McBride showed, which was created from a  
4 technically rigorous, realistic traffic micro  
5 simulation model. That was not a stream of trucks all  
6 coming and going at once. There were trucks, to be  
7 sure, joining other cars and trucks on the road, but  
8 nothing like what you may have imagined.

9                   That video showed the section of  
10 Britannia Road immediately adjacent to the facility  
11 entrance which will have the highest number of trucks.  
12 The further away from the facility, the fewer facility  
13 trucks there will be.

14                   And on the last day of evidence, a  
15 week ago today, you heard the Ontario Ministry of  
16 Transportation explain that the number of  
17 project-associated trucks per ramp was expected to be  
18 very low and the regional arterial road network  
19 provides sufficient alternative routes and  
20 interchanges so that the impact of the project on  
21 provincial highways would be relatively minimal.

22                   Mr. McBride explained that the  
23 regional road network is capable of handling these  
24 trucks. The trucks would be dispersed across a robust  
25 network of regional arterial roads connecting to and

1 from the 400 series highways, and there would be more  
2 than enough capacity to accommodate the truck traffic.

3 And as you know, his work is well  
4 documented in detailed reports on the record,  
5 including information on all the underlying data and  
6 assumptions.

7 That level of transparency and  
8 demonstrated rigour stands in contrast to the evidence  
9 of the Halton Municipalities' experts on traffic. All  
10 the Halton Municipalities offered was a series of  
11 largely unsubstantiated conclusions.

12 It was acknowledged in questioning  
13 that the Halton Municipalities' traffic conclusions  
14 relied on some unusual assumptions. One apparent  
15 assumption in particular, that all the terminal  
16 traffic might use a single designated haul route, is a  
17 good example.

18 As Mr. McBride explained, the use of a  
19 single individual haul route for all the facilities'  
20 traffic is a practice used by relatively remote  
21 facilities such as mines or quarries that don't have  
22 immediate access to roads that can handle trucks.

23 There is no question that this area  
24 has a robust and rapidly expanding regional arterial  
25 road network expressly designed to accommodate trucks

1 and would, therefore, never logically confine all the  
2 trucks from a facility to one route. That would  
3 artificially concentrate the traffic and lead to undo  
4 stress on that one particular route.

5 The Halton traffic experts also  
6 assumed the no facility trucks would use Highway 407  
7 even though CN has committed throughout this process  
8 to direct the 20 percent of trucks that are within our  
9 control to use Highway 407 where practical and  
10 feasible.

11 The Halton experts also assumed that  
12 terminal trucks would avoid roundabouts even though  
13 the roundabouts on the regional arterial road network  
14 are designed to accommodate trucks and there is no  
15 evidence to suggest trucks would avoid using them. In  
16 fact, one major trucking company who presented on the  
17 first week of the hearing, Schneider Trucking,  
18 explained that roundabouts are common and that their  
19 drivers use them regularly.

20 These assumptions could be just some  
21 of the reasons the Halton traffic experts reached  
22 intersection capacity conclusions that differed  
23 markedly from the analysis of Mr. McBride.

24 One important thing to reiterate is  
25 that the Halton Municipalities have not substantiated

1 their assertions through proper documentation in their  
2 submissions to the Panel. The traffic studies that  
3 have been submitted do not include critical pieces of  
4 information that allow a proper review of their work,  
5 including complete traffic volumes used in their  
6 analysis, traffic signal timing plans, growth  
7 assumptions, lane configurations and so on.

8 A very important related point, and  
9 one that illustrates the broader point I'm trying to  
10 make, is captured in the assertion by Halton that the  
11 volume of truck traffic from the facility was  
12 anticipated in their traffic or road network planning.

13 This is in fundamental conflict with  
14 their position that they have, for a decade, based all  
15 their planning on the very same CN lands being used as  
16 a rail-served industrial park. That is a use that in  
17 2008 was projected to consume more of those same lands  
18 and generate more truck traffic.

19 And this was really the point, Madam  
20 Chair, of filing the 2008 BA Group Report on the  
21 rail-served industrial park with the Panel as  
22 undertaking number 15.

23 That report was provided to Halton  
24 Region in 2008. I will highlight a couple of things  
25 from the BA memo, Exhibit 10, that helps explain this

1 point.

2                   You will see the peak hour traffic  
3 from the first phase of the multi-phase rail-served  
4 industrial park is, all on its own, a comparable truck  
5 generator to the terminal, not to mention also  
6 generating significantly more additional car traffic.

7                   You will also note that the  
8 rail-served industrial park was planned to be more  
9 than triple the size of the first phase. That fact  
10 was noted in the 2008 BA Group Report, and it would  
11 therefore have been logical for a transportation  
12 planner to anticipate that the rail-served industrial  
13 park would ultimately generate many more trucks when  
14 fully developed, perhaps more than three times as many  
15 trucks.

16                   And finally, while some of the car  
17 trips might be made by transit, walking or cycling as  
18 suggested by the Halton Municipalities, none of the  
19 truck trips could be made in any other way.

20                   In short, the traffic generated by the  
21 facility can be accommodated by the local road system.  
22 This conclusion is consistent with the fact that the  
23 region was aware of CN's project and planned the road  
24 network.

25                   The next topic, Madam Chair, will be

1 on safety.

2 We completely understand that traffic  
3 safety is a concern for the community and we take that  
4 concern very seriously. We know there are avid  
5 cyclists in Milton and we know that some are concerned  
6 about family members and what kind of risk the Milton  
7 Logistics Hub could represent.

8 For those in the room with those  
9 concerns, I hope you were here to listen to Mr.  
10 Brownlee, a safety expert from True North Safety, when  
11 he gave his evidence to the Panel. And I hope you  
12 noticed that none of the other witnesses took issue  
13 with his ultimate conclusion that they -- there will  
14 be a very low collision risk increase as resulting  
15 from the terminal-related traffic.

16 That was also true for his opinion  
17 that the roundabouts in this area are and will remain  
18 safe. Mr. Brownlee noted that, from a pedestrian and  
19 cyclist point of view, the collisions at roundabouts  
20 represent a very, very small percentage, in fact, a  
21 fraction of one percent of the total number of  
22 collisions.

23 As noted on Halton's Region own web  
24 site, roundabouts have lower speeds, fewer accidents,  
25 and are safer for pedestrians than conventional

1 intersections.

2 The next topic, Madam Chair, is on the  
3 subject of noise.

4 Rail facility noise is an issue firmly  
5 under the responsibility of the CTA, so I won't spend  
6 a lot of time today on the way railway noise is  
7 managed all across Canada.

8 You heard from Mr. Babic and Mr.  
9 Coulson about the comprehensive rail specific regime  
10 developed over many decades. You heard how the CTA  
11 has detailed guidance and that the noise assessment  
12 for this project was carried out in accordance with  
13 that guidance.

14 Stantec conducted that assessment and  
15 Mr. Coulson of RWDI peer reviewed it and found it to  
16 be rigorous and comprehensive. In his view, the  
17 assessment reasonably predicts that with the planned  
18 mitigation there should be no noise or vibration  
19 issues.

20 Mr. Penton for Halton agreed that  
21 vibration should not be a concern. He also agreed  
22 that noise during construction would not be an issue.

23 The focus of Mr. Penton's critique was  
24 that CN's experts should have used short-term duration  
25 noise criteria such as Ontario's MECPs one-hour basis

1 noise criteria, MPC 300. Importantly, the MECP was  
2 invited by the Panel to participate in the hearing and  
3 they did.

4 They provided specific comment on the  
5 project, registry document 791, yet raised no concerns  
6 at all regarding noise or vibration. They took no  
7 issue with the criteria that was applied and certainly  
8 did not suggest or imply that MPC 300 should have been  
9 considered.

10 As CN's experts explained, the  
11 criteria that were used, including Health Canada's, is  
12 applied to rail operations across the country. It is  
13 comprehensive and takes into account all types of  
14 noises, including impulsive noise and short duration  
15 effects such as sleep disturbance.

16 CN's experts explained that those  
17 guidelines apply significant penalties, which included  
18 penalties for impulsive noise, as well as a nighttime  
19 penalty. These are applied as a conservative measure  
20 designed to overweight the noise predictions out of an  
21 abundance of caution.

22 The Halton witness has acknowledged  
23 that his concern about impulsive noise were not based  
24 on actual data or modelling predictions from the  
25 Milton Logistics Hub work but his own speculation.



1 The Halton witness also raised concerns about what he  
2 characterized as a lack of consideration of sleep  
3 disturbance. Specifically, Health Canada's guidance  
4 indicates that for existing environments that already  
5 have an elevated baseline, such as above the World  
6 Health Organization's recommended threshold of 40  
7 decibels, the community response criterion change in  
8 percent HA is appropriate to use.

9 CN's experts noted that the existing  
10 noise environment was above 40 decibels and that they  
11 therefore applied the community response criterion.  
12 You heard that the project is predicted to meet that  
13 criterion.

14 We also heard from Health Canada that  
15 in that kind of environment where existing sound  
16 levels at night are already above 40 decibels, it is  
17 common for people to close their windows at night,  
18 which does make a difference.

19 There was some further discussion  
20 about whether an additional analysis of individual  
21 nighttime noise events should be carried out.  
22 However, the guidance recommends that type of analysis  
23 for quiet rural areas which, as you know from the  
24 noise assessment results, this part of Milton is not.  
25 So on its own terms, the additional events analysis

1 would not apply.

2 CN, as you know, nevertheless  
3 indicated during the hearing that we would be happy to  
4 work with Health Canada during detailed design to  
5 carry out that analysis and consider mitigating any  
6 issues that may be identified. Health Canada said  
7 that would be acceptable to them.

8 There was also some discussion of the  
9 speech intelligibility consideration articulated in  
10 Health Canada's guidance. Undertaking 31 explains why  
11 that it is not expected to be a concern for this  
12 project.

13 Finally, I would note that the  
14 assessment considered mitigation measures proposed by  
15 CN as well as those that exist already today, such as  
16 noise berms and barriers along the main line in the  
17 subdivisions north of the project.

18 Madam Chair, you will recall the  
19 presentation from the developers in the last general  
20 session with respect to noise mitigation proposed for  
21 the project suggesting that CN was externalizing  
22 mitigation of environmental effects. CN has proposed  
23 several mitigation measures to minimize the effects of  
24 project-related noise from the terminal, including  
25 strategic berming around the site.

1                   With respect to areas along CN's main  
2 line north of Britannia Road, common noise mitigation  
3 measures, such as berms and barriers, would be  
4 required of land developers even without the project  
5 similar to what has been done for the existing  
6 developments farther north. Those standard measures  
7 were taken into account in the assessment.

8                   Overall, the assessment showed that,  
9 with mitigation, the project would meet criteria at  
10 all receptors around the project. No additional  
11 measures beyond those that already exist or are  
12 proposed are expected to be required.

13                   Finally on this topic, Madam Chair,  
14 you heard CN has its own complaint process and that  
15 CTA also has a process.

16                   CN has also committed to establish a  
17 community working group if the project proceeds.  
18 These processes will ensure that noise complaints, if  
19 any are received, will be addressed.

20                   My last substantive topic will be  
21 about accidents and malfunctions.

22                   I'm turning to it because I know we  
23 have members of the local community here today and I  
24 want to emphasize, as strongly as I can, that this  
25 facility is not the kind of safety risk that the

1 Halton Municipalities have been asserting.

2 This is a very serious topic for CN.  
3 The safety of our employees and the communities in  
4 which we operate is a core value for us, is of  
5 paramount importance. Locomotives, railcars,  
6 containers and trucks need to be operated and handled  
7 with the utmost of care, and safety is top of mind at  
8 all times.

9 And in some of our operations and at  
10 some of our car load yards, CN moves and handles large  
11 quantities of hazardous material. It is our  
12 obligation as a common carrier to move all freight  
13 delivered to us, but not in intermodal. That is not  
14 what the business line does and not what the Milton  
15 Logistics Hub will do. And it is critical that  
16 members of the local community understand that.

17 The information provided by Dr. Bercha  
18 is incorrect. I don't want anyone in this room going  
19 home today misunderstanding intermodal's goods  
20 movement. The volume -- volumes of dangerous goods  
21 carried through intermodal are exceedingly small and  
22 the vast majority of those are incorporated into  
23 consumer products in consumer-sized packaging, cans of  
24 paint, cleaning products. It is not what most people  
25 have in mind when they think of this issue.

1                   Not surprisingly, the Transportation  
2 Safety Board statistics make it clear that the risk of  
3 any serious accident is, in fact, extremely remote.

4                   So, Madam Chair, there are two  
5 takeaways on this topic. One, the safety of our  
6 employees and the communities in which we operate is  
7 paramount for CN. And two, the risk profile of this  
8 particular kind of facility is very low.

9                   I want to turn finally to mitigation  
10 measures and conditions. And you know we have  
11 proposed quite a few mitigation measures and we have  
12 this week provided an updated list containing the  
13 additional measures we agreed to through the course of  
14 this hearing.

15                   I don't propose to take you through  
16 any of them now, but I do want to cover them in a  
17 general way.

18                   We understand that any kind of  
19 industrial operation generates impacts, and the Milton  
20 Logistics Hub would be no different. Doing the work  
21 to understand in great detail what those impacts could  
22 be and tailoring mitigation measures to address them  
23 is what this process has been all about, a process  
24 that has drawn on the expertise of hundreds of experts  
25 in government and the private sector; been under the

1 careful management of the Canadian Environmental  
2 Assessment Agency; been subject to the independent  
3 assessment of this expert Panel; benefitted from the  
4 active input and participation by numerous federal and  
5 provincial agencies, as well as local governments;  
6 benefitted from the active input and participation of  
7 members of the local community; and been subject to  
8 robust examination through the information request  
9 process and this substantial public hearing.

10 So we did not cut any corners at any  
11 stage on any subject. For that reason, there is no  
12 question in my mind that the potential impacts of this  
13 facility have been well studied and thereby, now well  
14 understood. The mitigation measures have been  
15 tailored to fit that knowledge and they can be  
16 reasonably expected to address the issues that have  
17 been identified.

18 And because all of that work -- and  
19 because of the value input from everyone who  
20 participated, there should be a high degree of  
21 confidence in the Milton Logistics Hub proposal.  
22 Madam Chair, which of those proposed mitigation  
23 measures make their way into the proposed conditions  
24 is, of course, in the hands of the Panel. But I do  
25 want to make a couple of observations.

1                   First, as Mr. Chapman from CEAA  
2                   observed, the conditions naturally have to be  
3                   practical and not inadvertently contain a poison pill,  
4                   as he called it, that will undermine project  
5                   feasibility.

6                   Second, I want to turn to the point I  
7                   made earlier on in my remarks about the urgency for  
8                   the project. I think you heard that message loud and  
9                   clear from many of the witnesses from the supply chain  
10                  community. When you are considering your  
11                  recommendations, we ask you to keep that in mind.  
12                  Further delay would not just be problem for CN, it  
13                  would be a supply chain problem and you have heard how  
14                  broad and far reaching that is. It is not an  
15                  understatement to say that further delay will have  
16                  adverse consequences across the entire economy.

17                  And lastly on this topic is the matter  
18                  of the enforceability of the conditions. You have  
19                  heard me before and I will restate, that we believe  
20                  every mitigation measure we have proposed is enforced  
21                  federally.

22                  Madam Chair, we have reviewed the  
23                  Conservation Halton closing submissions and we were  
24                  pleased to see some acknowledgment by Conservation  
25                  Halton of the rigour of the work completed by the

1 experts retained by CN. While there are still some  
2 areas of disagreement, it is our hope that we could  
3 succeed in developing a constructive, collaborative  
4 relationship with Conservation Halton as part of the  
5 detailed design phase of the project.

6 We have to be clear, Madam Chair,  
7 actively pursuing that collaboration for years now.  
8 We have a long correspondence record reflecting our  
9 efforts, but those efforts have not been as successful  
10 as we had hoped, in part we think, because of  
11 Conservation Halton's concern that the project must be  
12 subject to their approval mechanism, and Conservation  
13 Halton's coordinated alignment with Halton  
14 Municipalities' opposition to the project.

15 We believe that any conditions seeking  
16 to facilitate a process for the constructive technical  
17 input of Conservation Halton into detailed design  
18 should be tailored with that background in mind.  
19 Conservation Halton has suggested that only through  
20 the application of the regulatory function can  
21 technical issues be addressed.

22 We believe through our experience  
23 elsewhere that technical issues can, in fact be  
24 effectively addressed through a constructive,  
25 collaborative dialogue outside a formal process. A



1 condition for example, which provides that  
2 Conservation Halton must be satisfied, must approve,  
3 or must agree to any element of the project proposal,  
4 would we expect not facilitate meaningful input. On  
5 the other hand, a condition that requires CN to seek  
6 and make reasonable efforts to take into account  
7 Conservation Halton's technical input on the subjects  
8 they have identified in their submission ,would be  
9 more likely to make sure the focus remains on the  
10 technical merits.

11 So in short, Madam Chair, we're very  
12 open to meaningful collaboration with Conservation  
13 Halton, and as long as any conditions designed to  
14 facilitate the collaboration are structured  
15 appropriately, we would enthusiastically welcome them.

16 Panel members, in conclusion, I would  
17 like to reiterate that CN has been safely operating in  
18 Milton for over 100 years. We have proposed a project  
19 that we strongly believe will have significant,  
20 positive impacts to Canada's supply chain, its  
21 economy, and air quality, and that we have  
22 meaningfully and thoroughly addressed.

23 We have proposed a broad suite of  
24 measures to mitigate the potential adverse effects and  
25 enhance the benefits. On behalf of CN, I want to

1 thank again the Panel members, the Secretariat, and  
2 all the participants in this process. We genuinely  
3 appreciate the efforts of those who have invested  
4 their time and energy which have helped make this  
5 proposed project better. For the panel, we know your  
6 work is not done, as you will prepare your report,  
7 conclusions and recommendations. We thank you in  
8 advance for this.

9 Our work as well is not complete. As  
10 you have heard, we are committed to ongoing engagement  
11 with aboriginal groups and the community here in  
12 Milton. And we look forward to that.

13 And with that, Madam Chair, I am  
14 finished my remarks. Thank you.

15 THE CHAIRPERSON: Mr. Lerner, Mr.  
16 Reynolds, Ms. Patterson, thank you very much for those  
17 remarks. We have one more set of closing remarks and  
18 they belong to the Panel, but we have been sitting  
19 here for quite a while. I suggest we take two or  
20 three minutes to stand up and stretch. I assure you,  
21 we are not going to go on very long. Release is  
22 imminent.

23 --- Upon recessing at 2:06 p.m. /

24 Suspension à 14 h 06

25 --- Upon resuming at 2:13 p.m. /

1 Reprise à 14 h 13

2 THE CHAIRPERSON: If you would like to  
3 take a seat, we will -- the Panel will make its  
4 concluding remarks.

5 **CLOSING REMARKS**

6 THE CHAIRPERSON: The Review Panel was  
7 appointed and began its mandate in December of 2016.  
8 Since that time, we have reviewed the EIS, asked a  
9 number of information requests, some of you might say  
10 a large number of information requests, and received  
11 comments and submissions from a large number of  
12 participants over the last two and a half years.

13 The Panel commenced our hearing a  
14 month ago today on June the 19<sup>th</sup>. Since then, we have  
15 sat in this room for over three weeks, hearing from  
16 CN, community groups such as Milton Says No and Milton  
17 R.A.I.L., federal and provincial government  
18 representatives, indigenous groups, and  
19 representatives of Conservation Halton and the Halton  
20 Municipalities, and many other businesses and  
21 organizations.

22 We heard from technical experts and  
23 members of the public. I have been told we had over  
24 87 presentations from 50 different groups and  
25 individuals.

1 I would like to assure you all that  
2 we, the Panel, heard your views and value your input.

3 As a reminder, all of the documents  
4 related to our record are available on the public  
5 registry. There are also transcripts there from every  
6 day of the hearing and today's will be up on Monday.

7 There are also links there to the  
8 archived webcast, in case any one of you would like to  
9 relive the glory that is this hearing.

10 --- Laughter / Rires

11 THE CHAIRPERSON: I doubt if I will be  
12 watching, personally.

13 --- Laughter / Rires

14 THE CHAIRPERSON: The Panel will be  
15 reviewing this information as we prepare our report.  
16 At this point, I declare the record for the joint  
17 process of the review of the Milton Logistics Hub  
18 Project to be closed. The transcript of today will be  
19 the last document we consider and any future  
20 submissions will not be received or reviewed by the  
21 Panel.

22 The one exception for this is in line  
23 with the Panel's decision on the matter discussed at  
24 the outset of today's session, CN will be permitted to  
25 provide a brief response to Appendices A and B of the

1 Halton Municipalities written closing remarks. This  
2 information is due no later than July the 22<sup>nd</sup> at 5:00  
3 p.m. eastern standard time. Once received, the review  
4 Panel will also publish this information on the  
5 registry.

6 So the next steps.

7 Through the process of the information  
8 requests and responses, and the public hearing itself,  
9 the review Panel has determined it now has all of the  
10 information to requires to write its report.  
11 Technical information, views and opinions of  
12 participants and now the written and oral closing  
13 remarks of interested parties.

14 Our report will include our  
15 conclusions, rationale, and recommendations for the  
16 Federal Environmental Assessment. Including any  
17 recommended mitigation measures and requirements for  
18 follow up programs. We will also include a summary of  
19 comments received from the proponent, indigenous  
20 groups, government bodies, the public and other  
21 interested parties. We will submit our report to the  
22 Minister of the Environment and Climate Change at the  
23 earliest possible date and within the overall time  
24 limit established by the Minister. Which means it  
25 must be submitted to later than January the 29<sup>th</sup>,

1 2020.

2           The Minister will then be required to  
3 make a decision on whether the project is likely to  
4 cause significant adverse environmental effects. The  
5 steps for the Minister's decision-making process are  
6 outlined starting in section 5.25 of our terms of  
7 reference, so I won't repeat that here.

8           Subject to the Minister's decision  
9 statement under section 54 of *CEAA 2012*, the Canadian  
10 Transportation Agency would then be required to make a  
11 determination in accordance with section 98 of the  
12 *CTA*. That decision would take into consideration the  
13 comments from the localities, concerning the location  
14 of the railway lines, requirements for railway  
15 operations and services, and interests that will be  
16 affected by the lines, any questions or responses to  
17 those comments filed by CN and any replies to CN's  
18 comments received from the public and other interested  
19 parties.

20           This joint process for the review of  
21 the project has gathered the information the *CTA* will  
22 require for that decision.

23           In my opening remarks I observed that  
24 we were engaged in a joint process to review the  
25 proposed project. One Panel, one hearing, but

1 possibly two separate decisions under two pieces of  
2 federal legislation. The joint process brings with it  
3 a certain complexity which is now the Panel's to  
4 wrestle with.

5           This I want to assure you all, the  
6 three Panel members before you began this process with  
7 open minds. Throughout the review we have inquired,  
8 listened and sought to understand to the best of our  
9 ability. As we prepare the Environmental Assessment  
10 report, we will stay true to this principle of open  
11 inquiry.

12           And now we want to thank everyone who  
13 has participated in any way and at any stage of the  
14 review for the joint process. The First Nations with  
15 rights and interests in this part of Ontario and  
16 history of use and occupation going back thousands of  
17 years. Individuals and organizations based in the  
18 community of Milton and surrounding areas.  
19 Representatives of the municipal and regional  
20 governments for Milton and Halton. Experts from  
21 provincial and federal government departments.  
22 Industry and business representatives from one coast  
23 to the other. And, of course, the proponent for the  
24 project, CN.

25           Collectively, your hard work,

1 persistence and willingness to provide information and  
2 share experience, knowledge, ideas and aspirations  
3 with the Panel was invaluable. I commend all of you  
4 who participated in this hearing, for your respectful  
5 and constructive engagement. It has made the Panel's  
6 work so much easier.

7                   And at this point, I also want to  
8 single out those of you who have contributed to this  
9 review process without being paid to do so. We fully  
10 appreciate that this has taken time away from your  
11 families, your work, your other community involvement,  
12 and time away from your enjoyment of the summer. And  
13 we thank you for this valuable contribution.

14                   With that, I will close the hearing  
15 for the Joint Process for the review of the Milton  
16 Logistics Hub project. My Panel colleagues and I hope  
17 you can now take some time to recover and to enjoy the  
18 rest of the summer.

19                   Thank you all.

20 --- Whereupon the hearing concluded at 2:21 p.m. /

21                   L'audience s'est terminée à 14 h 21

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CERTIFICATION

WE HEREBY CERTIFY that the foregoing has been reported  
and transcribed to the best of our skill and ability

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Kristin Johansson                      Jackie Clark

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Brian Denton                              Deana Johansson