

**The Public Hearing for the
Milton Logistics Hub Project**

**Written Submission of
Pony Pines Development Inc.,
Stevenson Land Development Inc.,
Shadybrook Development Inc.**

July 2019

Executive Summary

The subject lands, which are located immediately to the north of CN's proposed project, were identified for residential urban development over 20 years ago. After rigorous land use planning, extensive public consultation, commenting and approval (including by CN), homes will be under construction within 12 months.

CN has frequently indicated that it will review the environmental noise impact effects of its proposed project on residents of these lands at the time of detailed design and "consider" further mitigation.

CN's approach is problematic for three reasons:

- detailed design occurs after approval (i.e., after the Panel has exhausted its mandate);
- CN's commitment is only to "consider" further mitigation; and
- CN has already indicated that it is not required to mitigate noise impacts on the future residents of these lands and that the landowners are responsible for such mitigation.

The *Canadian Environmental Assessment Act* requires that the Panel be guided by the "precautionary principle" (Section 4). The precautionary principle states that a lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

By asking that mitigation for these residents be deferred until after the Panel has exhausted its mandate, CN asks this Panel to ignore the precautionary principle – it asks that the Panel defer the risks of CN's project onto the residents. This, the Panel should not and cannot do.

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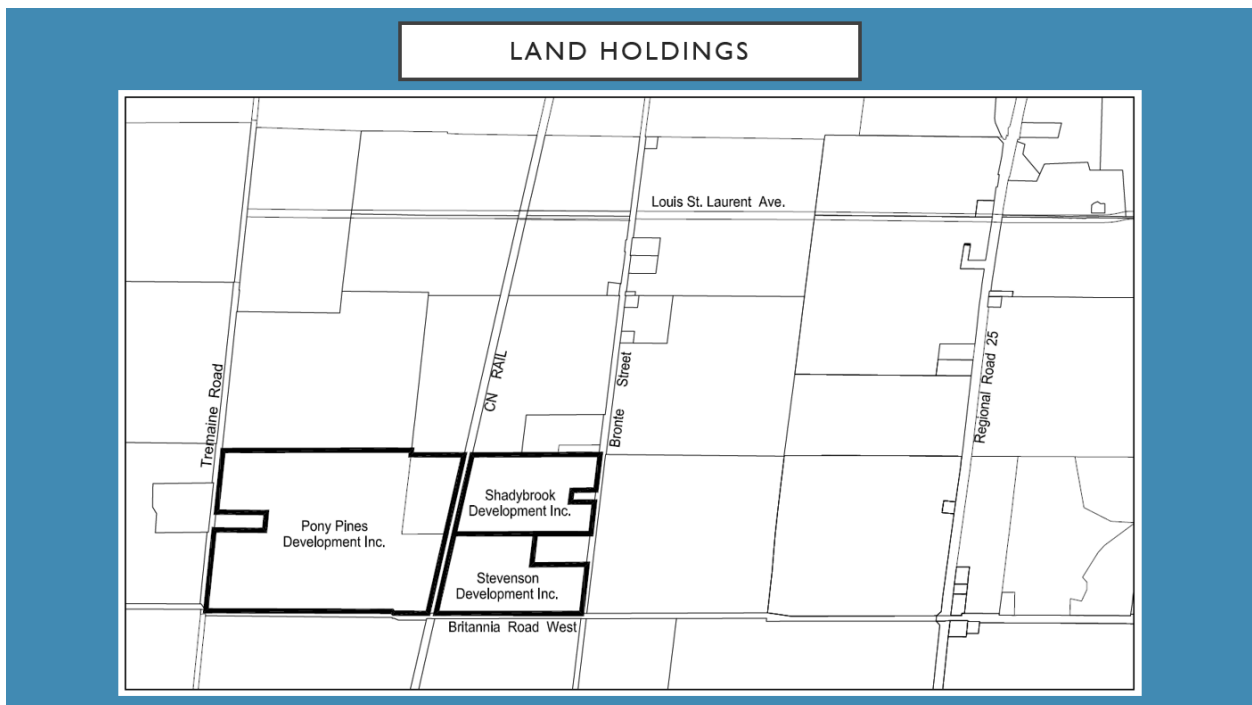
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Subject Landholdings

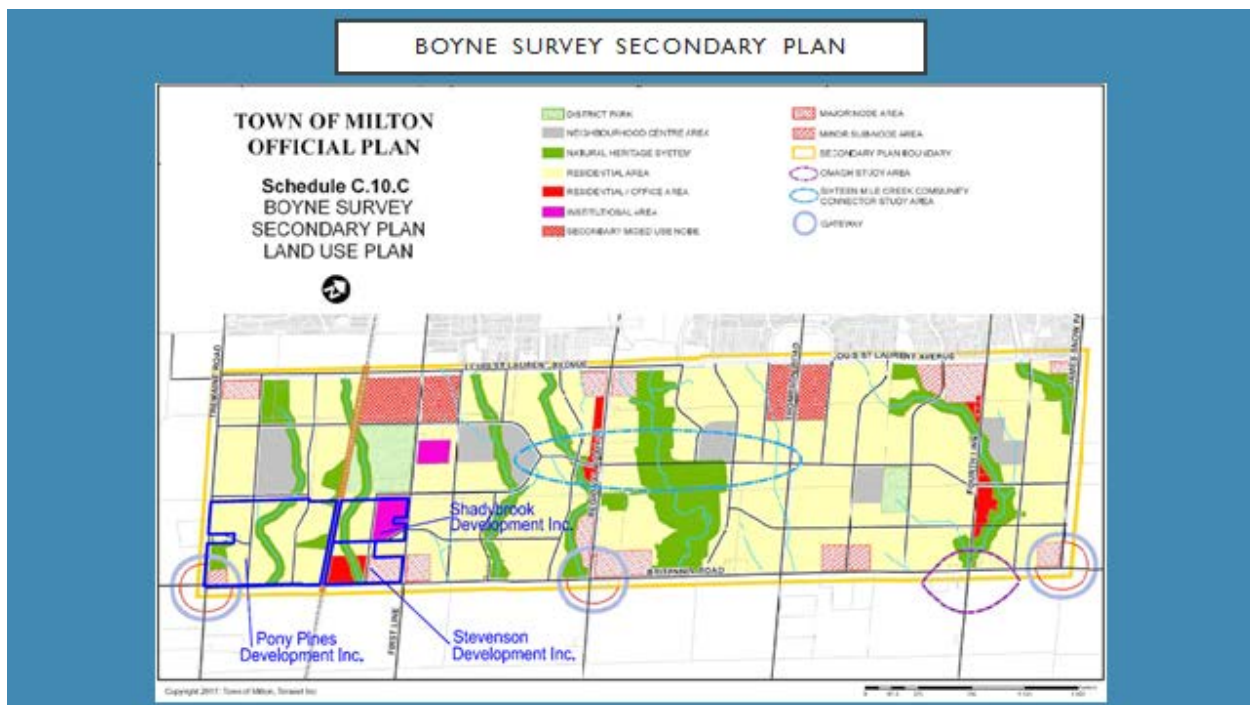
This submission relates to lands owned by Pony Pines Development Inc., Stevenson Land Development Inc., and Shadybrook Development Inc. (the “Subject Lands”) which are shown on the figure below. As is evident from the figure, these lands are located north of Britannia Road and the proposed Milton Logistics Hub project and west and east of CN’s principal main line.



The Subject Lands are approved for 1900 homes in addition to related community spaces such as parks, “greenways”, and elementary and secondary schools over approximately 190 acres. Construction of homes will be underway within 12 months.

Long Standing History of Residential Community Approval

The Subject Lands are located within a planning area known as the Boyne Survey Secondary Plan area (the “Boyne Lands”). The Boyne Lands were identified for residential urban development in accordance with the provincial *Planning Act* by the Region of Halton and the Town of Milton over 20 years ago.¹ When fully built-out, these lands will be home to approximately 50,000 people. The planning approvals for the Boyne Lands including the Subject Lands are very advanced as the Panel heard from both the Town and the Region.²



It was the evidence of Curt Benson from the Region of Halton and Barb Koopmans from the Town of Milton³ that the land use approval process for residential

¹ *Planning Act*, R.S.O. 1990, c. P.13.

² Testimony, Hearing Transcript dated June 26, 2019 (CEAA #879) at p. 1255:15-1256:7, 1257:13-1258:19, 1278:20-25 and 1322:7-1325:23. See also p. 1159:18-24. For a history of the approvals, see: Barb Koopmans, Town of Milton: Interests and Land Use Planning Framework updated June 26, 2019 (CEAA #800).

³ *Ibid.*

development on Subject Lands in conjunction with the entire Boyne Lands has been subject to an extensive public process as required under the Ontario *Planning Act* over the past decade involving the Province, the Region of Halton, the Town of Milton, Halton Conservation Authority, provincial and federal agencies (including CN), neighbouring property owners, Milton residents and other stakeholders.

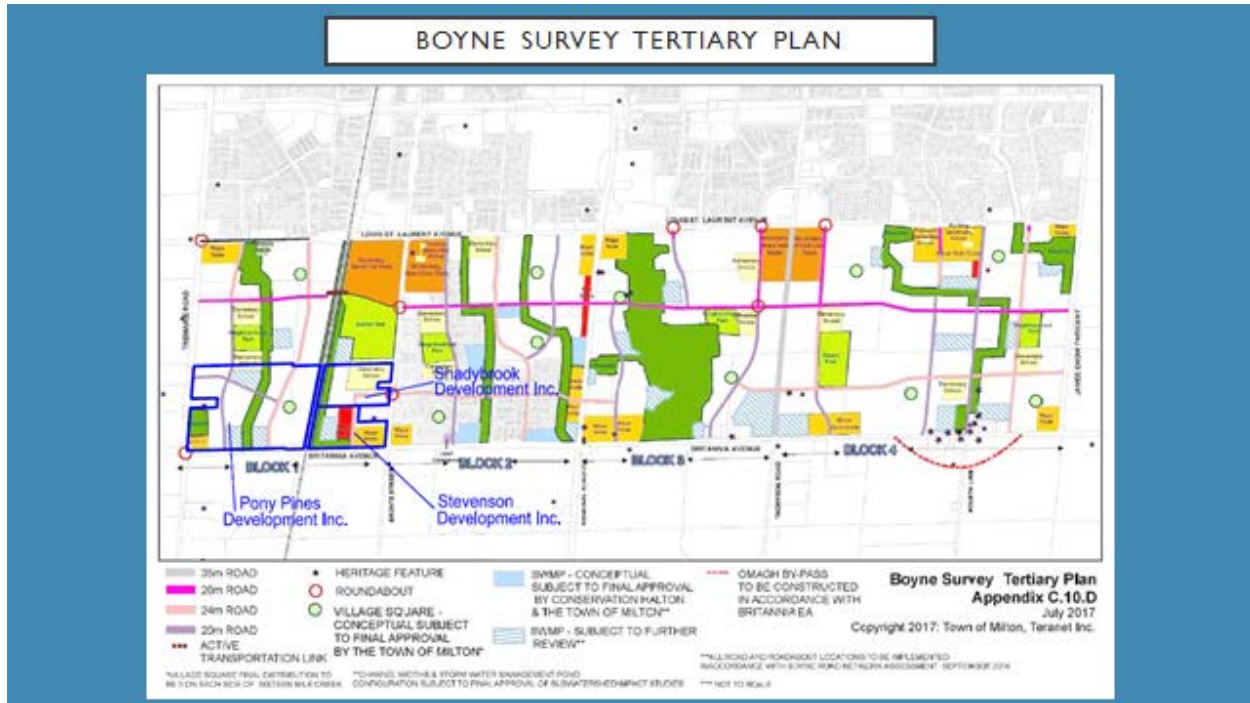
The local official plan – the Boyne Survey Secondary Plan – was adopted by Milton in 2010 and approved by the Region in 2013.

In order for development to proceed in the Boyne Survey Secondary Plan area, a number of extensive studies had to be completed to the satisfaction of the Region of Halton, the Town of Milton and the Conservation Authority such as:

- Subwatershed Study Update, 2015
- Functional Servicing and Environmental Management Study, 2015
- Conceptual Fisheries Compensation Plan.

These studies were subject to public consultation and agency review, including by CN.

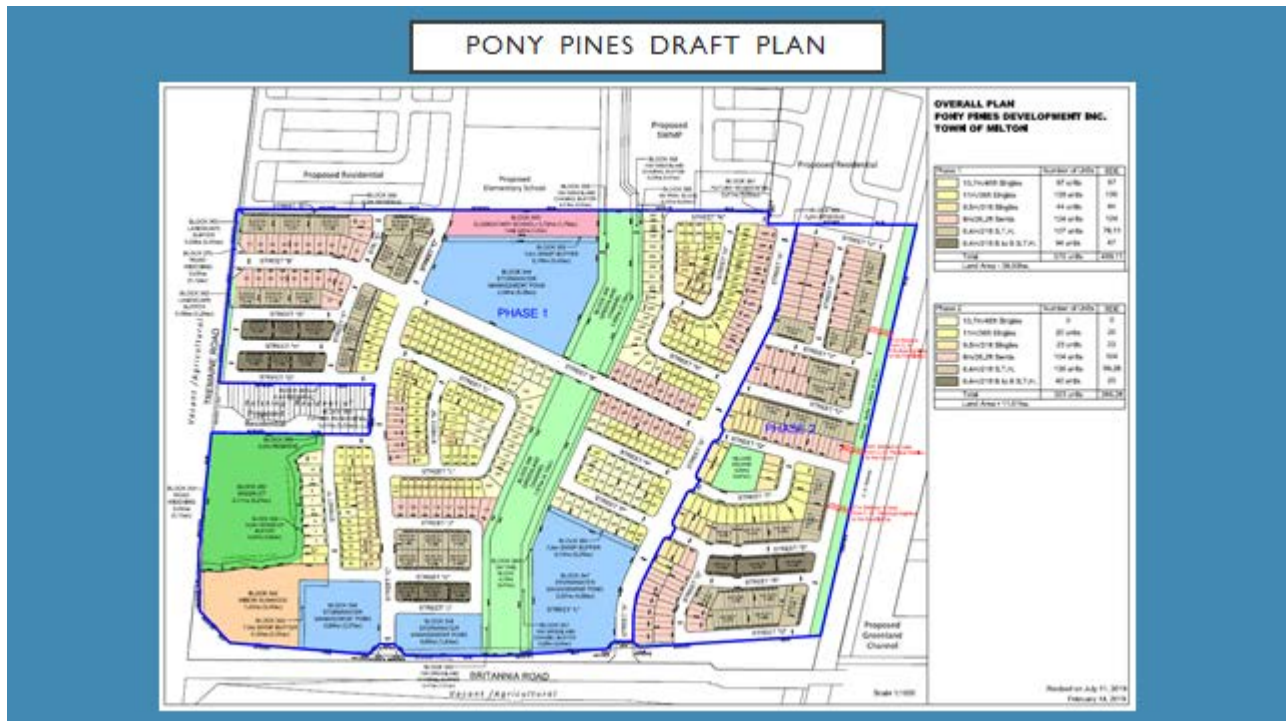
The water, wastewater and road projects necessary to support this development required environmental assessment approvals under the Provincial Class Environmental Assessment process.



The approval of a “Tertiary Plan” for the Block 1 bound by Tremaine Road, Bronte Street, Britannia and Louis St. Laurent Avenue – being a more detailed land use plan based on the technical details informed by the Subwatershed Implementation Study – was also required and was approved in 2017.

The Planning approvals in place for the Boyne Lands incorporate CN’s setback requirements for its Principal mainline.

The individual draft plans of subdivision and the required supporting studies and technical reports for the Subject Lands were submitted to the Town in 2014. These plans have been circulated and have received comments from approval authorities and commenting agencies (including CN).



On the Pony Pines lands immediately north of Britannia at Tremaine Road, earthworks and a channel re-alignment project are currently underway. Construction of underground servicing (sewer, water and storm water) to serve the community will commence in the spring of 2020 and house construction in the fall of 2020.

The lands on the east side of the CN tracks immediately north of Britannia – the Shadybrook/Stevenson lands – will proceed sequentially as the Pony Pines subdivision is built out. The Halton Catholic School Board has already purchased the high school on the Shadybrook lands, east of the CN tracks and is in the process of site development.

The Pony Pines Phase I lands have had the zoning by-law enacted, the plan of subdivision has been finalized to the satisfaction of the approval authorities and commenting agencies (including CN) and final conditions of approval are settled. This plan will yield approximately 1100 homes. In short there has been extensive study, review and consideration for residential uses and the investment and preparation for development has been significantly advanced.

CN Seeks to Externalize Responsibility for Mitigating the Effects Caused by Its Project

CN asserts that it need not implement any noise mitigation on its lands to protect future residents living north of Britannia in the Pony Pines, Shadybrook and Stevenson subdivisions.⁴

An acoustic report in support of these subdivision plans was prepared by HGC Engineering and submitted to the Town in accordance with the standard terms of reference required by the Town, Region, Ontario Ministry of Environment, Conservation and Parks and CN. The report recommended a noise barrier adjacent to CN's main line in order to protect residents from the noise generated by rail traffic on the mainline. This is a standard requirement which provides effective mitigation for CN's existing rail infrastructure. Completion of this mitigation at the landowner's cost is required as a condition of approval by the Town.

CN retained Jade Acoustics, an acoustic consultant, to provide comments to the Town on the acoustic report prepared by HGC in support of the subdivisions.

CN's consultant has advised that the HGC study must be updated to include the projected noise from CN's proposed facility and that any mitigation required to address noise impacts from CN's proposed facility is the responsibility of the landowner. This amounts to an admission by CN that there are adverse environmental effects caused by CN's proposed project and that these adverse effects will require mitigation. CN should not be permitted to externalize the mitigation of the environmental effects that its project will cause. CN should be responsible on its own site to mitigate its own noise impacts.

This meticulously planned community should not have to bear the responsibility of mitigating adverse effects caused by CN. A decision to approve CN's project should

⁴ CN EIS at Appendix E.10 (Stantec Report) - Milton Logistics Hub Technical Data Report - Noise Effects Assessment (CEAA # [57](#)) at Table 5.3, p. 42.

not have the consequence of requiring the residential landowners to perform additional mitigation or provide new setbacks.

The Precautionary Principle

The *Canadian Environmental Assessment Act, 2012* underscores the importance of the precautionary principle and expressly requires responsible authorities to apply this principle:

“4 (1) The purposes of this Act are

(b) to ensure that designated projects that require the exercise of a power or performance of a duty or function by a federal authority under any Act of Parliament other than this Act to be carried out, are considered in a careful and precautionary manner to avoid significant adverse environmental effects;

Mandate

(2) The Government of Canada, the Minister, the Agency, federal authorities and responsible authorities, in the administration of this Act, must exercise their powers in a manner that protects the environment and human health and applies the precautionary principle.”

The Precautionary Principle:

In order to achieve sustainable development, policies must be based on the precautionary principle. Environmental measures must anticipate, prevent and attack the causes of environmental degradation. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

The principle states that a “lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation”.⁵ This is precisely what CN is proposing to do.

Referring to Health Canada’s concern regarding sleep disruption caused by noise:

“MS. PATTERSON: CN is committed to doing both points on that slide.⁶

THE CHAIRPERSON: And CN, you’re confident that when you do that assessment that, in fact, you will find that the project does meet Health Canada criteria?

MS. PATTERSON: Until the analysis is done, I don’t think I could speculate on that. Once the analysis is done, if additional mitigation measures are required, we’ll definitely look into that and continue consultations with Health Canada.”⁷

⁵ Bergen Ministerial Declaration on Sustainable Development (1990).

⁶ Referring to Health Canada’s Presentation to the Review Panel for the Milton Logistics Hub Project dated July 9, 2019, Recommendation 2-1 (CEAA# [818](#)) at p. 8.

⁷ Panel Questioning, Hearing Transcript dated July 9, 2019 (CEAA # [933](#)) at p. 2656:25 – 2657:10.

Scientific Uncertainty

As set out in more detail below, the Panel was presented with evidence that CN's determination of ambient sound levels may result in an overestimation of noise, particularly at night. CN's projections of stationary noise emissions from the proposal may be underestimated.

It is the difference between background or ambient noise and the stationary noise emissions from CN's facility which is concerning. Nighttime noise carries the potential for sleep disturbance, which, per Health Canada's guidelines, negatively affects human health.⁸ CN admits that Health Canada guidelines apply to its project.⁹

The difference between these two is critical to CN's analysis of adverse environmental effects as well as the need to implement mitigation. In such instances the application of the precautionary principle demands that noise mitigation be required as a condition of approval to address the uncertainties in the analysis in order to prevent potential significant adverse environmental effects.

In suburban areas where sound levels are dominated by road traffic, ambient sound levels typically follows a diurnal pattern – it is less noisy at night.¹⁰ By using 24-hour average sound levels, CN's noise assessment over-estimates ambient nighttime sound levels in a manner that obfuscates the true potential for impacts

⁸ Scott Penton Testimony, Hearing Transcript dated July 9, 2019 (CEAA # [933](#)) at p. 2587:1-10; Health Canada, *Guidance for Evaluating Human Health Impacts in Environmental Assessment: Noise* dated January 2017 (available online [here](#)) at section 5.2.

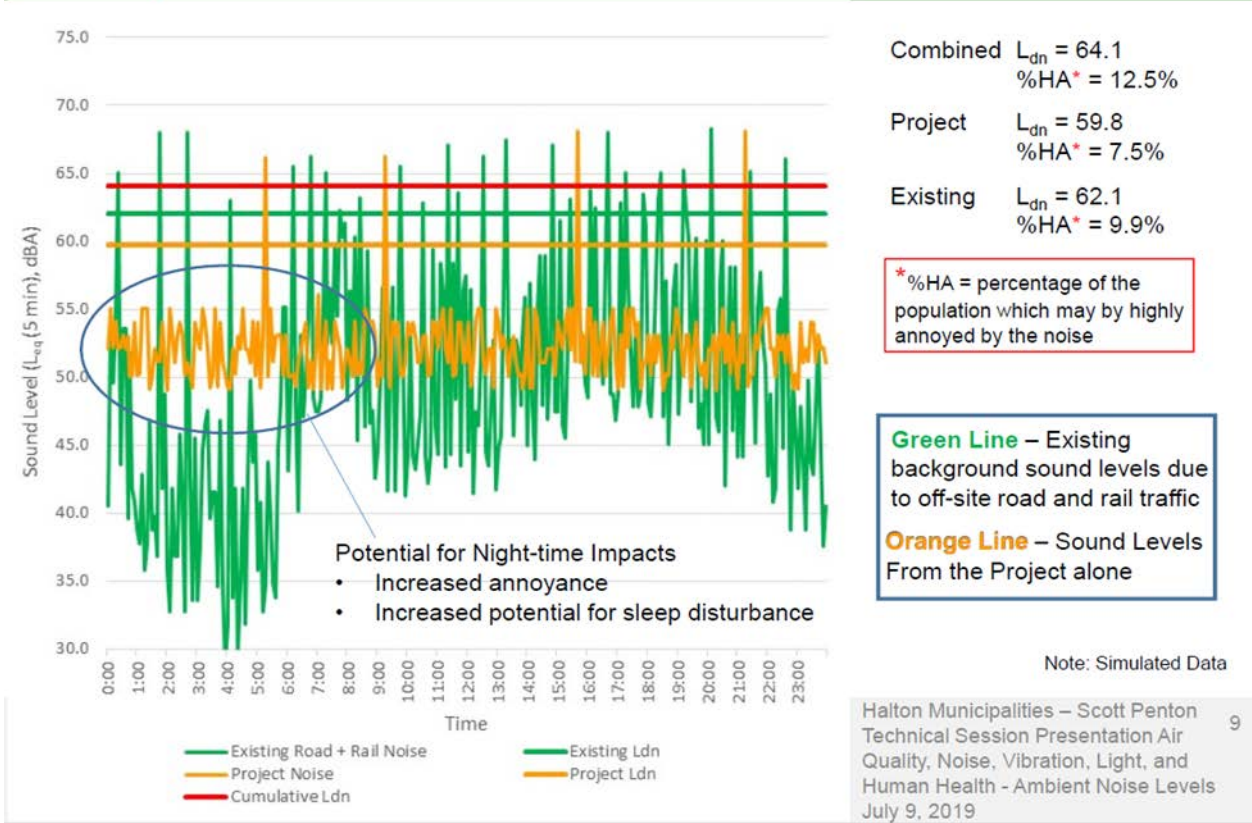
⁹ CN Testimony, Hearing Transcript dated July 9, 2019 (CEAA # [933](#)) at p. 2485:17-21, 2492:1-13 and 2499:15-16.

CN has also applied the American FTA guidelines as supplemental criteria, but FTA's guidelines do not include criteria for sleep disturbance based on noise from impulse events: Panel Questioning and Scott Penton Testimony, Hearing Transcript dated July 9, 2019 (CEAA # [933](#)) at p. 2500:5-18 and 2587:11-24.

¹⁰ Scott Penton Testimony, Hearing Transcript dated July 9, 2019 (CEAA # [933](#)) at p. 2585:8-22; Halton Municipalities – Scott Penton, Technical Session Presentation, Air Quality Noise, Vibration, Light, and Human Health – Ambient Noise Levels (CEAA # [905](#)) at p. 9.

from its facility on sleep disruption.¹¹ The municipality's expert has demonstrated this graphically:¹²

Example of Combined Sound Levels

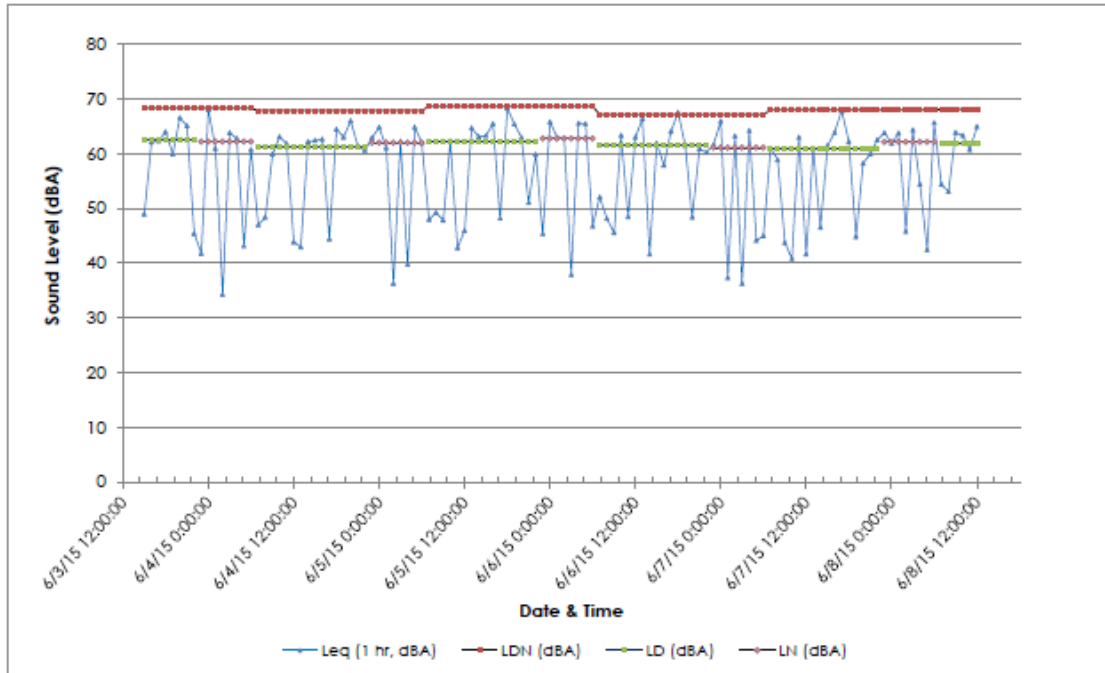


¹¹ Scott Penton Testimony, Hearing Transcript dated July 9, 2019 (CEAA # [933](#)) at p. 2583:10-2586:25.

¹² Halton Municipalities – Scott Penton, Technical Session Presentation, Air Quality Noise, Vibration, Light, and Human Health – Ambient Noise Levels (CEAA # [905](#)) at p. 9.

CN's own documents also demonstrate the extent to which it has underestimated nighttime noise (which can reach lower than 35 dBA) in its analysis:¹³

FIGURE D.2: AMBIENT MONITORING RESULTS FOR LOCATION M02-2015 – JUNE, 2015



Nor is CN's calculation of projected noise comprehensive. While CN did consider impulsive noise emissions in assessing impacts on 24-hour averaged sound levels, CN did not assess the impacts of individual impulses.¹⁴ The precise location and type of equipment within the proposed intermodal facility and where and when it might operate will have an effect on the volume/amount/level of noise. It appears that these things may not be known until the detailed design of the project is complete.¹⁵

CN's Environmental Impact Statement states that berms will be constructed to mitigate noise effects during operation,¹⁶ and CN has testified that the size and

¹³ CN EIS at Appendix E.9 – Technical Data Report, Baseline Ambient Noise Study (CEAA # 57) at figure D.2, p. D.2. See also, similarly, figure D.3.

¹⁴ Scott Penton Testimony, Hearing Transcript dated July 9, 2019 (CEAA # 933) at p. 2625:15-2526:7.

¹⁵ See footnotes 7, 17-19, *supra* and *infra*.

¹⁶ CN EIS at Appendix G.2 – Mitigation Measures and Commitments (CEAA # 57) at p. 34.

location of the berms will be confirmed during the detailed design stage.¹⁷ Therefore, as admitted by CN, CN will not know if its project meets Health Canada's standards until after its detailed analysis is completed.¹⁸ CN proposes to "consider" additional mitigation only after the approval to proceed has been granted, *after* complaints are made by residents.¹⁹

A proper application of the precautionary principle would result in a condition of approval requiring that mitigation be required and not merely "considered" later. While this could be addressed by way of mitigation plan, as noted by the Agency, plans cannot be used to defer the identification of mitigation measures.²⁰

¹⁷ Panel Questioning, Hearing Transcript dated July 9, 2019 (CEAA # [933](#)) at p. 2623:20-2624:4.

¹⁸ Panel Questioning, Hearing Transcript dated July 9, 2019 (CEAA # [933](#)) at p. 2657:2-10, 2658:22-2659:3 and 2661:24-2662:6.

¹⁹ Panel Questioning, Hearing Transcript dated July 9, 2019 (CEAA # [933](#)) at p. 2654:4-8 and 2642:18-2643:1.

²⁰ Decision Statements under CEAA 2012, Presentation to the Milton Logistics Hub Project Review Panel (July 11, 2019) (CEAA # [945](#)) at p. 8.

Appropriate Mitigation is Required

The Stantec Report identifies suggested locations on CN lands for berms and barriers to mitigate noise effects.²¹ If the project proceeds in its proposed location, in order to properly protect the residential community north of Britannia Road from adverse effects, CN should be required through a condition of approval, to provide a continuous noise barrier in the form of a berm or berm and acoustic fence at a minimum height of 5 m generally in the location shown on Schedule A.

Locating an acoustic barrier close to the noise source is normally the most economical and practical option to implement noise control measures.²² Further, locating the mitigation on CN's land ensures that the construction and maintenance of the acoustic barrier would be entirely within CN's control.

CN is already proposing acoustic barriers on its own land with a minimum height of 5 metres.²³ Extending this barrier in the location shown on Schedule A and constructing it in a manner similar to what is already proposed should be sufficient to address the uncertainty arising from the CN's noise assessment. The final height of the barrier should break the line of sight between the second story windows of the adjacent residential community and the noise source.

²¹ CN EIS at Appendix E.10 (Stantec Report) - Milton Logistics Hub Technical Data Report - Noise Effects Assessment (CEAA # [57](#)) at p. 38

²² Environmental Noise Guideline - Stationary and Transportation Sources - Approval and Planning (NPC-300) at C7.6 (available online [here](#)).

²³ CN EIS at Appendix E.10 (Stantec Report) – Milton Logistics Hub Technical Data Report – Noise Effects Assessment (CEAA # [57](#)) at p. 38.

Proposed Condition

In the oral submission made to the Panel on July 11, 2019, we advised that we would offer a more specific suggestion to the Panel about a condition of approval that it might recommend in connection with its report following the hearing.

We support the position of the Halton Municipalities that the proposed location of the Milton Logistics Hub Project is not appropriate; however, in the event the Milton Logistics Hub is recommended for approval, we ask the Panel to recommend that the following condition be imposed:

CN shall install a noise barrier with a minimum height of 5 m in the location shown on Schedule A. The barrier may be comprised of a berm or a berm and acoustic fence. The final height shall be sufficient to break the line of sight between the second story windows of the adjacent residential community and the noise source and shall achieve a noise reduction of at least 10 dBA.
