The Regional Municipality of Halton

Report To:	Regional Chair and Members of Regional Council
From:	Art Zuidema, Commissioner, Legislative and Planning Services
Date:	June 12, 2019
Report No. - Re:	LPS78-19 - CEAA Panel Review of the Proposed CN Milton Logistics Hub

RECOMMENDATION

1. THAT the Region supports the May 29, 2019 submissions of the Halton Municipalities to the review panel established under the *Canadian Environmental Assessment Act, 2012* ("CEAA") including, in particular, the findings that the Proposed CN Milton Logistics Hub Project is likely to cause significant adverse environmental effects, as further outlined in Report No. LPS78-19 re: "CEAA Panel Review of the Proposed CN Milton Logistics Hub".

2. THAT the Region supports the May 29, 2019 submissions for setting out the "interests of the localities" relevant to CEAA and section 98 of the *Canada Transportation Act* ("CTA"), as further outlined in Report No. LPS78-19 re: "CEAA Panel Review of the Proposed CN Milton Logistics Hub".

3. THAT the Region supports the future submission to the Canadian Environmental Assessment Review Panel for the Proposed CN Milton Logistics Hub by the Halton Municipalities of such further information, including oral and written presentations and remarks, as advances the May 29, 2019 submissions and matters relevant to the CEAA and section 98 of the CTA, as further outlined in Report No. LPS78-19 re: "CEAA Panel Review of the Proposed CN Milton Logistics Hub".

4. THAT the Regional Clerk forward a copy of Report No. LPS78-19 to the Canadian Environmental Assessment Review Panel for the Proposed CN Milton Logistics Hub prior to the start of the Panel's public hearing, June 19, 2019.

5. THAT the Regional Clerk forward a copy of Report No. LPS78-19 to the City of Burlington, the Town of Halton Hills, the Town of Milton, the Town of Oakville and Conservation Halton, Halton's MPs and MPPs, the Federation of Canadian Municipalities, and the Ontario Ministry of Municipal Affairs and Housing for their information.

REPORT

Discussion

Further to Report LPS69-19 re: "Proposed CN Milton Logistics Hub", this report provides an update on the work done by staff and the expert team to respond to the Federal Environmental Assessment Review Panel (the "Panel") request for information.

The Panel's mandate is set by the *Canadian Environmental Assessment Act, 2012* ("CEAA") and because of Canadian National Railway's ("CN") need for railway line approval is also set by the *Canada Transportation Act* ("CTA"). The central question to be addressed by the panel is whether, taking mitigation and cumulative effects into account, the proposed CN Milton Logistics Hub ("Project") is likely to cause significant adverse environmental effects.

The CEAA provides a specific definition for "environmental effects" which has a narrow meaning. However, because the Project requires federal regulatory approval, the meaning of environmental effects must include all effects relevant to the regulatory approval. This is important to the Project because the regulatory approval under section 98 of the CTA provides that the relevant considerations include the "interests of the localities" that are affected. Accordingly, the interests of the Halton Municipalities are relevant to both the CEAA and the CTA processes and ultimate decisions.

As noted in LPS69-19, the Panel wrote to the Halton Municipalities and made two specific requests. The first request acknowledged the expertise and mandate of the Halton Municipalities and sought input on "municipal interests and standards in water, natural heritage, transportation, agricultural and employment matters". This request affirms the Panel's interest in assessing compliance with all standards (not just federal standards) when assessing the Project.

The second request sought the Halton Municipalities' technical input on the potential environmental effects of the Project. The Panel specifically referenced criteria that assess the magnitude, geographic extent, frequency, duration, reversibility, and ecological and social context of the Project's adverse environmental effects. The Panel also sought technical input on the predicted effectiveness of the proposed mitigation measures.

On May 29, 2019 the Halton Municipalities responded to these Panel requests by providing the Panel with a detailed submission that also addressed the central question of the Panel's mandate on significant effects. This submission is titled "Halton Municipalities' Brief of SAEEs" (the "SAEE Brief") and can be found on the Review Panel's website at https://www.ceaa-acee.gc.ca/050/evaluations/document/130149?culture=en-CA.

The SAEE Brief is organized around Valued Components ("VC") of the environment identified by the Canadian Environmental Assessment Agency in guidance to the Panel.

For each Valued Component, the SAEE Brief contains a technical review of the Project's effects on the VC, focusing on relevant standards and criteria. These VC reviews are attached to this report as Appendix 1A through 1CC.

In response to the Panel's request for technical input on mitigation, the SAEE Brief assesses whether the proposed mitigation is effective, and also whether it is federally enforceable. This latter assessment is consistent with the CN position that the Project has constitutional immunity and exemption from any provincial or municipal regulation. It also responds to CEAA requirements.

Based on detailed assessment of enforceable mitigation, applicable standards and likely effects, the Brief finds that the Project is likely to cause significant adverse environmental effects on eleven of eighteen biophysical VCs and seven of eight socio-economic VCs, namely:

- Topography and soil
- Drainage basins
- Surface water bodies
- Surface quarter quality
- Ambient air quality
- Ambient noise levels on residences
- Ambient night-time light levels
- Migratory bird species
- Migratory bird use of area
- Species at risk (terrestrial)
- Habitat for species at risk (terrestrial)
- Human health conditions
- Human safety conditions (effects from derailments, intermodal transfer mishaps, spills of hazardous materials, and fires)
- Rural settings
    - Urban settings (and valued sub-components on transportation and movement on roadways, municipal water and wastewater infrastructure, and municipal infrastructure financing)
- Residential land use
- Industrial Commercial and Institutional land use
- Physical and cultural heritage

As required by the CEAA, the SAEE Brief also provides the Panel with assessments of cumulative effects, not just Project effects. For two important topics – road safety and road usage – the Region relies on its own haul route analysis and traffic modeling to assess impacts of the Project on the Regional road network. Based on this modelling, Project-related trucks are not likely to cause a significant adverse environmental effect on road safety, but are likely to cause increased traffic congestion amounting to a significant adverse environmental effect. Further, if Project container throughput increases, roadway safety will also likely become a significant adverse environmental effect.

For other effects, the SAEE Brief uses a list of other physical activities identified by CN to assess whether the Project, in combination with these other activities, is likely to cause cumulative significant adverse environmental effects. It identifies twelve cumulative significant adverse environmental effects - seven on biophysical VCs and five on socio-economic VCs, including human health, residential land use, and industrial land use.

Additionally, reflecting the Panel's specific request for municipal input regarding standards related to the Regional Official Plan ("ROP"), the SAEE Brief identifies several VCs where the Project does not conform to ROP standards and will affect other properties, lands and/or future developments. These cumulative effects are related to the Region's natural heritage system, rural countryside, employment land use, and municipal infrastructure planning and financing.

Other May 29th Filings with the Panel

The May 29, 2019 filing from the Halton Municipalities also included planning opinions from the Region's Chief Planning Official, Curt Benson, and the Town of Milton's Planning Commissioner, Barb Koopmans that provided the Panel with details on the land use planning framework applicable to Regional and Town decisions.

The SAEE Brief also addresses Halton Municipalities' interest in the ultimate throughput that could be carried out on the site. Prior to May 29, 2019, CN had refused to engage the Halton Municipalities on this "ultimate" capacity question. As noted in LPS69-19, the Halton Municipalities filed a report with the Panel from international expert John Vickerman outlining that the anticipated annual throughput could double within the current footprint proposed by CN. On May 29, 2019 CN filed a new report on this topic. The Halton Municipalities will address their interest in this issue and the recent CN report through future written and oral presentations provided to the panel during the hearing process.

The Halton Municipalities' May 29, 2019 filings also included a transportation issues report from Lisa De Angelis, the Region's Director of Infrastructure Planning & Policy that attaches the modelling reports described above and additional reports on haul route issues, information related to CN's Brampton intermodal facility, facility design and capacity assumptions of John Vickerman, and the Region's Britannia Road Class Environmental Assessment study.

Lastly, the May 29, 2019 filings include a portfolio of GIS maps prepared by the Region to provide the Panel with detailed information on the Region's natural heritage system at and around the Project site, sensitive land uses in the site vicinity, and other important topics relevant to future presentations to the Panel.

The Panel's public hearing is scheduled to be held from June 19, 2019 through July 17, 2019. The detailed schedule can be found on the Panel's website. Prior to the start of the public hearing, any presentation material must be submitted to the Panel by June 16, 2019.

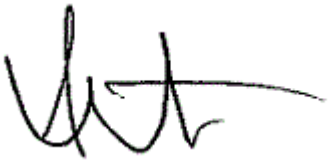
FINANCIAL/PROGRAM IMPLICATIONS

The approved budget for T5215B includes sufficient funding for participation in the Review Panel process.

Respectfully submitted,

Bob Gray
Director, Legal Services and Corporate Counsel

Curt Benson
Director, Planning Services and Chief Planning Official



Art Zuidema
Commissioner, Legislative and Planning Services

Approved by

Jane MacCaskill
Chief Administrative Officer

If you have any questions on the content of this report, please contact:	Bob Gray Curt Benson	Tel. # 7248 Tel. # 7181

Attachments:
1A – Halton Municipalities' Brief on Significant Adverse Environmental Effects - Introduction
1B – Topography and Soil Summary
1C – Geology and Geochemistry Summary
1D – Drainage Basins Summary
1E – Surface Water Bodies Summary
1F – Surface Water Quality Summary
1G – Ambient Air Quality Summary
1H – Ambient Noise Levels on Residences Summary
1I – Ambient Night-Time Light Levels Summary

1J – Fish Populations Summary
1K – Fish Habitat Summary
1L – Fish Movement Summary
1M – Migratory Bird Mortality Summary
1N – Migratory Bird Use of Area Summary
1O – Species at Risk Distribution and Mortality Summary
1P – Species at Risk Habitat Summary
1Q – Human Health Summary
1R – Human Safety Conditions Summary
1S – Rural Settings Summary
1T – Urban Settings Summary
1U – Transportation Summary
1V – Transportation Movement on Roadways Summary
1W – Urban Settings (Active Transportation) Summary
1X – Urban Settings (Municipal Water/Wastewater Infrastructure) Summary
1Y – Urban Settings (Municipal Financing) Summary
1Z – Residential Land Use Summary
1AA – ICI Employment Land Use Summary
1BB – Cultural Heritage Resources Summary
1CC – Archaeological Resources Summary