

BRIEF

2016

Halton Municipalities

Regional Municipality of Halton
Corporation of the City of Burlington
Corporation of the Town of Halton Hills
Corporation of the Town of Milton
Corporation of the Town of Oakville

Role of Halton Planning Framework within CEEA Panel Review of the CN Milton Logistics Hub Project

Regional Municipality of Halton

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Overview

CN Rail proposes to build a road-rail logistics hub, called the “Milton Logistics Hub Project” (the “Project”). The hub is designed to transfer containers between trucks and rail-cars. The Project also entails the construction of a railway yard and more than 20 km of track. The Project is located west of Toronto in the Town of Milton, within the Regional Municipality of Halton (“Halton” or “Region”).

The Project is a “designated project” under the *Canadian Environmental Assessment Act, 2012* (“CEAA”). On July 20, 2015, the federal Minister of the Environment (the “Minister”) referred the environmental assessment (EA) of this Project to a review panel under section 38 of CEAA.

Proposing the Project in Halton Region has special planning significance because Halton is one of Canada’s fastest growing municipalities and is subject to comprehensive municipal land use controls and standards.

To assist all stakeholders in this panel review, the Halton Municipalities¹ have prepared this Brief,² which integrates the federal EA framework for assessing designated projects with the Halton land use framework for considering new development and infrastructure. Federal EA planning under CEAA assesses projects for their likelihood to cause significant adverse environmental effects. Land use planning under Halton’s provincially-approved Official Plan (the “Regional Official Plan” or

the “ROP”) assesses development and infrastructure for their conformity with effects-based standards of general application across the Region.

Constitutional principles support federal, provincial, regional, and local regulatory authority over those aspects of the Project that fall within their respective jurisdictions. Equally, CEAA and the Minister require that this panel review take into account a broad array of effects from the Project, including effects that fall within municipal jurisdiction.

LIST OF DEFINED KEY TERMS USED IN THE BRIEF (For full Glossary, see Appendix C)

CEAA:	<i>Canadian Environmental Assessment Act</i>
CEA Agency:	the federal agency that advises and assists the Minister under CEAA
CTA:	<i>Canada Transportation Act</i>
CT Agency:	the Canadian Transportation Agency, operating under the CTA
EA:	Environmental Assessment
EIS:	an “Environmental Impact Statement” that a proponent of a “designated project” under CEAA must prepare
EIS Guidelines:	Guidelines that the Minister has issued to CN to prepare CN’s EIS for the Project
GGH	Greater Golden Horseshoe
Growth Plan	Growth Plan for the Greater Golden Horseshoe, 2006 (Office Consolidation, June 2013)
PDR	Project Description Report, prepared by Stantec Consulting Ltd. for Canadian National Railway Company (31 March 2015)
PPS	Provincial Policy Statement, 2014
Project:	the Milton Logistics Hub Project, a road-rail logistics hub project proposed by CN Rail
Regional Official Plan or ROP:	Halton Region’s Official Plan, as amended by ROPA 38 to its current form
SAEE:	Significant Adverse Environmental Effect (a term used in CEAA)
VC:	Valued Component, an environmental feature that may be affected by a project and that has been identified to be of concern by the proponent, government agencies, Aboriginal peoples, or the public ³

This Brief proceeds in four parts:

- Part A summarizes Halton Region and the Ontario planning regimes.
- Part B sets out the federal EA framework for the Project, including the Valued Components (VCs) of the environment identified in the EIS Guidelines issued for this Project, and current CEAA guidance on using standards to determine whether a project is likely to cause any significant adverse environmental effects (SAEEs).
- Part C examines the constitutional implications of this Project.
- Part D identifies land use standards from the Halton and Milton official plans that are relevant to the Project and the CEAA requirements to assess the significance of SAEEs.

This Brief includes three appendices:

- Appendix A provides visual aids to assist with understanding the Project in relation to important features, impacts, and land uses.
- Appendix B provides legal and technical support for all standards identified in this Brief.
- Appendix C provides a detailed glossary of terms and definitions relevant to Region and Provincial standards.

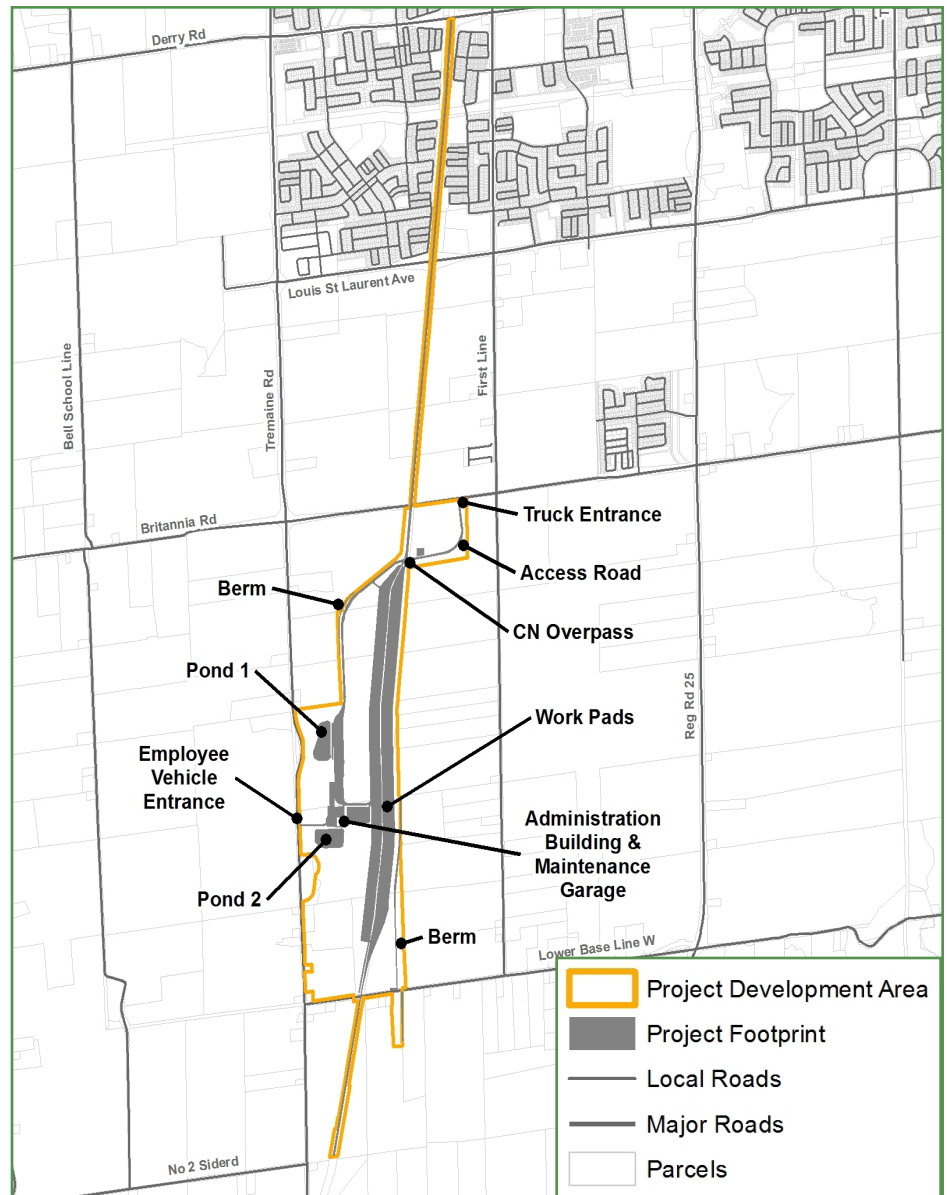


Figure 1: The Project footprint and its key components (see Appendix A, Figure 2).

Part A:

The Region of Halton and Ontario Planning Regimes

A.1	The Halton and Milton Setting
A.2	The Ontario Setting
A.3	Genesis of the Current Regional Official Plan for Halton

A.1 The Halton and Milton Setting

Halton Region is located in the Greater Toronto Area just west of Mississauga and Peel Region, and just east of the City of Hamilton. Halton Region was established by the *Regional Municipality of Halton Act* (“Regional Act”). In common with other regional municipalities across Ontario, the Regional Act created a two-tier system of government. The lower tier is the local government. In Halton Region, there are four lower-tier governments, including the Town of Milton.

Halton Region is responsible for delivering many programs and services, including regional planning and growth management, water and sanitary services, public health, social services, and a regional transportation network. The lower-tier governments also provide numerous programs and services, including local planning and zoning, building standards, fire protection, storm-water collection, local roads, transit, and business licensing. Since 1978, through its official plan (referred to in this Brief as the “Regional Official Plan” or “ROP”), Halton Regional Council has led land use planning across the Region. By law, all land use decisions by the Region and the lower-tier municipalities in the Region must

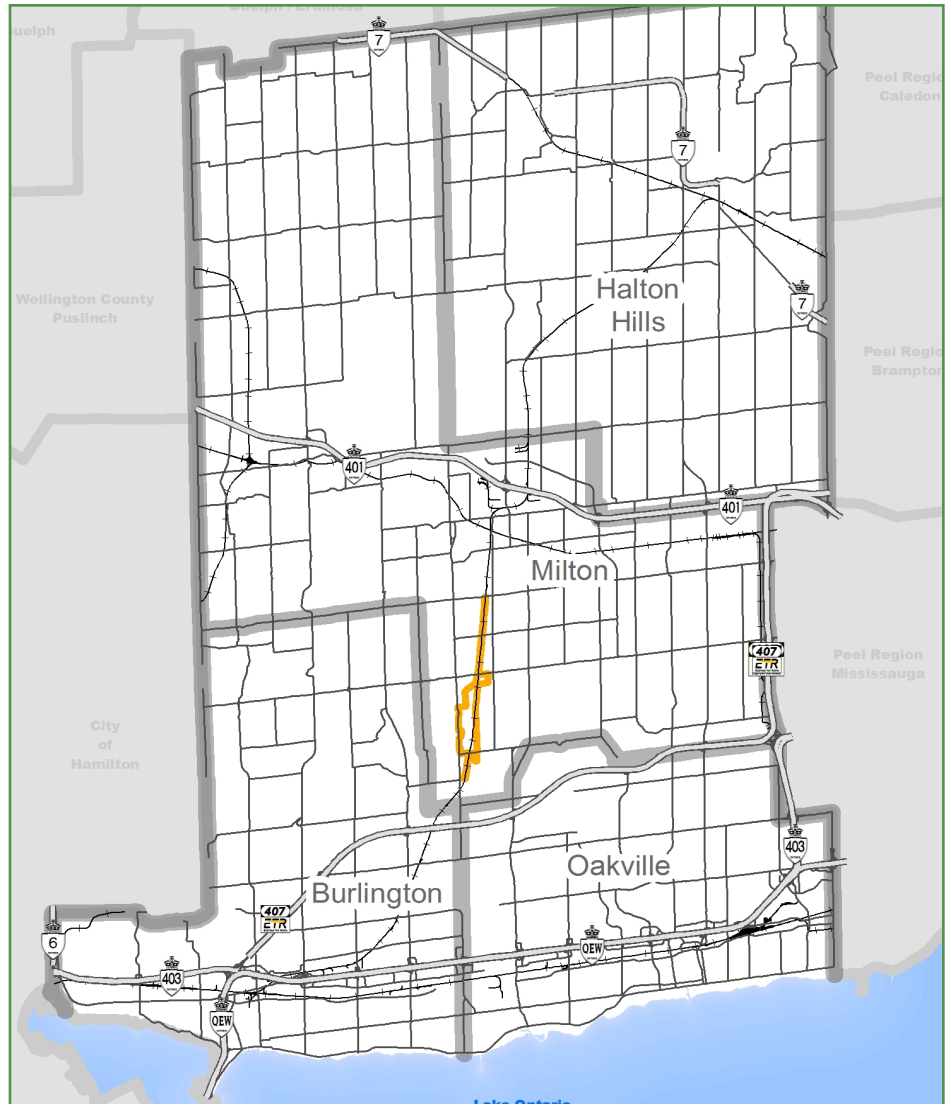


Figure 2: Halton Municipalities (see Appendix A, Figure 1)

conform to the ROP. As land use pressures across southern Ontario have intensified, the ROP has evolved to provide detailed effects-based standards of general application across the Region.

In recent years, the Region and the Town of Milton have undergone rapid growth. The regional population has grown from 340,000 residents in 1996 to approximately 535,000 residents in 2015. In that same

period, Milton’s population has more than tripled, from 32,000 to over 100,000 residents. To accommodate this growth, the Town has triggered five urban boundary expansions, two for employment lands and three for residential growth. This strong growth trend is expected to continue. Prior to the latest revision to the Regional Official Plan, the Project lands were designated as rural in the Region and Town OPs. Following a multi-year

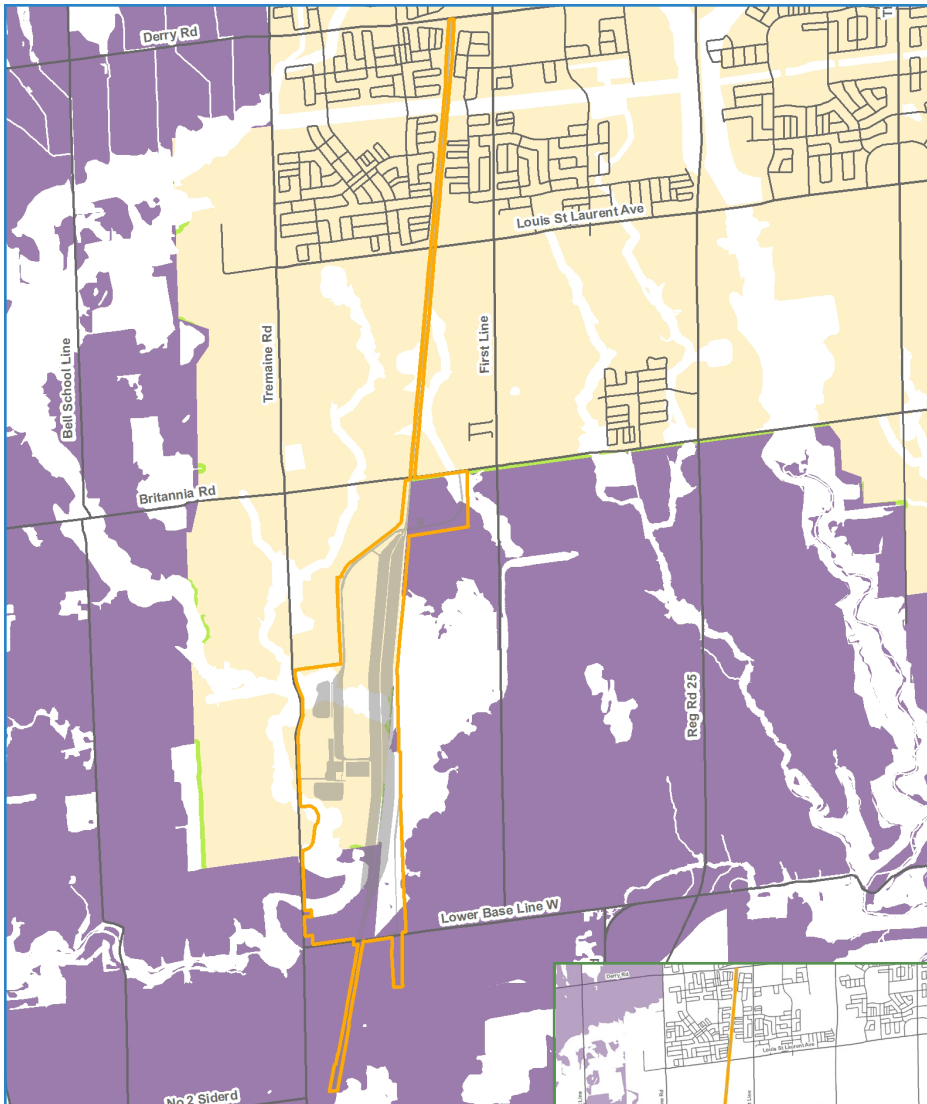


Figure 3: Agricultural Area and Urban Area (see Appendix A, Figure 26)

process culminating in the Region obtaining provincial approval to expand the urban boundary in the Town, the Project is now almost entirely inside the urban boundary of Milton.⁴

A.2 The Ontario Setting

In 2005, Ontario implemented a new provincial planning process to replace

piecemeal urban development “sprawl” with integrated urban development, called “smart growth.” The Province targeted the entirety of the Greater Golden Horseshoe (GGH) for this process. The first step was to enact new legislation known as the *Places to Grow Act, 2005*. The second step was to pass regulations under this legislation to establish a “designated growth area.” A 2005 regulation included the entirety of Halton Region within the GGH designated

“growth plan area.” The third step was to finalize, following extensive public consultation, a cabinet-approved GGH Growth Plan in 2006 (the “Growth Plan”).

The Growth Plan requires that growth be focused inside urban boundaries. It also seeks to develop complete communities that match residential and employment growth. To address the growth projected for Halton and Milton, the Growth Plan mandates an intensification target and a greenfield density target.

By law, all land use planning decisions made by the province, a municipality, or any provincial tribunal must conform with the provincial Growth Plan. Moreover, by law, the council of a municipality or a municipal planning authority that has jurisdiction in an area to which the Growth Plan applies must amend its official plan to conform with the Growth Plan.

Consistent with CEA Agency guidance on the relevance of scenario building to federal EA,⁵ Halton Region has been active in forecasting and planning land use across the Region for more than 40 years. The Council adopted the first Official Plan for the Region on September 6, 1978. There have been a number of subsequent amendments to this Regional Official Plan. Immediately following finalization of the Growth Plan in 2006, Halton Region began work on amending its existing Official Plan to comply with the Growth Plan. Ultimately, this work led to adoption in 2009 by Halton Council of Regional Official Plan Amendment (ROPA) 38 (called “Sustainable Halton”). Municipal adoption of ROPA 38 was followed by provincial approval in 2011 and, following a multi-year, multi-phase hearing, Ontario Municipal Board approval in 2016 for all lands including and surrounding the Project.

A.3 Genesis of the Current Regional Official Plan for Halton

Sustainable Halton brought the Regional Official Plan into conformity with several provincial planning initiatives that came into effect between 2004 and 2006, including the 2005 Provincial Policy Statement (PPS), the 2005 Greenbelt Plan, and the 2006 Growth Plan. This conformity was required due to 2004 and 2006 amendments to Ontario's *Planning Act*.

The Province amended section 3 of the *Planning Act* from requiring that the Region make planning decisions “having regard to” policy statements made by the Province, to require that it make its decisions “consistent with” such policy statements. In addition, the Province amended section 3 to require that Region decisions conform with designated “provincial plans” including the Greenbelt Plan and the Growth Plan.

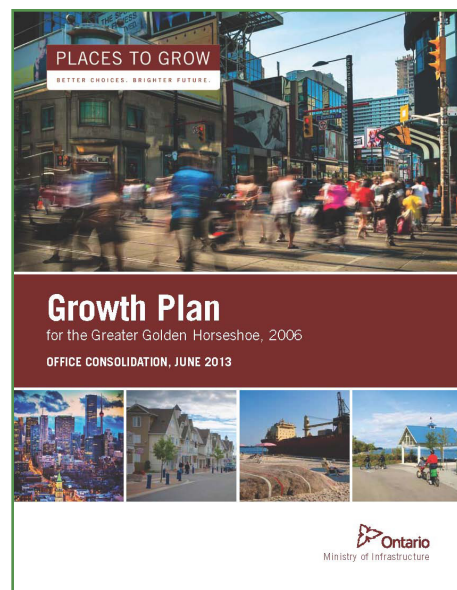
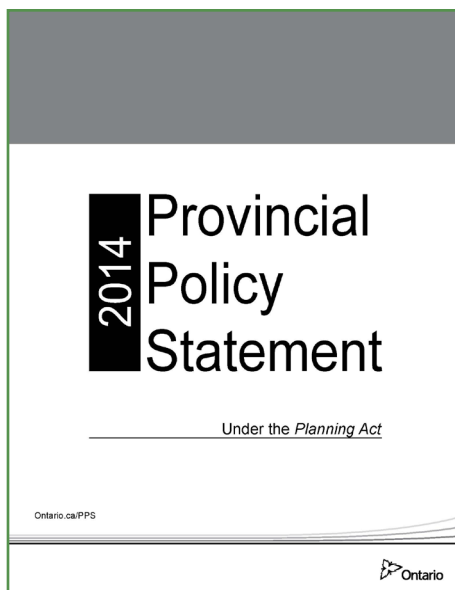
Provincial requirements for consistency with provincial policy statements and conformity with provincial plans provide minimum standards. ROPA 38 was designed to exceed these minimums and to customize planning for the unique needs of Halton Region.

The development of ROPA 38 followed an open and transparent process of extensive stakeholder engagement similar to previous official plans. The Region commissioned a series of wide-ranging technical background studies by experts on topics of public interest such as protection of the natural environment, preservation of farmlands, provision of affordable housing, and infrastructure needs to support new population and employment growth. The Region followed up on these studies with extensive public and agency consultation on the results of these studies, resulting

in an iterative cycle of drafting and consultation before the Council adopted the new Official Plan.

Throughout the Official Plan revision process, all stakeholders—including members of the public, the development industry, individual landowners, non-governmental organizations, local Halton municipalities, and provincial public agencies—had multiple opportunities to speak with Halton Region staff and experts on their

concerns. Equally, stakeholders had the opportunity to appear as a delegation to Committee and/or Council to further express their views on the matter prior to a decision by Council. Overall, this process resulted in many improvements to ROPA 38 and to the final product, the Regional Official Plan in its current form.



Part B

The Federal EA Framework for the Project

B.1	CEAA Framework to Identify Project Environmental Effects
B.2	Scope of Environmental Effects to be Considered in CEAA Environmental Assessment
B.3	Identification of Valued Components of the Environment
B.4	Use of Valued Components to Address the Significance of Effects

Initially, CN set out key details of the Milton Logistics Hub Project in its March 2015 Project Description Report (“PDR”). Because the Project includes the construction and operation of a new “railway yard” with “a total track length of 20 km or more,”⁶ the Project is a “designated project” under CEAA. This designated Project is located on 160 ha of CN lands within parcels totalling more than 500 ha of CN lands, all within the Town of Milton in the Region of Halton.

Based on CN’s PDR, on April 7, 2015, the CEA Agency commenced a screening process to determine whether the Project required an environmental assessment. On May 22, 2015, the CEA Agency decided that the Project required an EA and commenced that EA. On July 20, 2015, the Minister advised of her decision to refer this EA to a review panel and the CEA Agency issued EIS Guidelines for this EA.

A federal panel review includes a two-part public process. The first part deals with the adequacy of information. In general, the Minister will establish the terms of reference for the panel and determine

the scope of the factors of assessment for the EA. The CEA Agency will issue EIS Guidelines to the proponent. In response to the EIS Guidelines, the proponent will prepare an EIS. Then, the CEA Agency and the panel will carry out a public review of the sufficiency of the EIS based on the panel’s terms of reference, the EIS Guidelines, and governmental and public input. Where the panel concludes that the information before it is complete, it will proceed to the second part of the review process.

At the time of the Minister’s review panel referral in July 2015, the CEA Agency finalized the EIS Guidelines for the EA and identified a preliminary list of the Valued Components to be considered in the EIS.

The second part of panel review focuses on the project and its environmental effects. This process includes public hearings led by the panel. Often, the panel will schedule both general community meetings and topic-specific technical hearings to encourage public and expert participation. On completion of the second part of the process, the panel prepares and submits to the Minister a report of its rationale, conclusions, and recommendations (including any mitigation measures and follow-up program).

On receipt of the panel report, the Minister must make the report public and then decide whether or not the project is “likely to cause significant adverse environmental effects” (“SAEEs”). To make this decision, the Minister shall take into account all mitigation that the Minister considers appropriate, subject to the proviso that any identified mitigation must be within the authority of federal regulators. If the Minister concludes that, taking

into account appropriate mitigation, the project is likely to cause any SAEEs, then the Minister must refer the project to the federal cabinet for a decision on whether the SAEEs are justified in the circumstances. On the other hand, if the Minister concludes that taking mitigation into account, the project is not likely to cause any SAEEs, then the Minister may alone conclude the EA process.

The CEAA process concludes with the Minister’s issuance of a decision statement on the project.⁷ This statement informs the proponent of the Minister’s (or the cabinet’s) decision on the significance of environmental effects, any required justification for SAEEs, and any conditions that must be complied with. Once the decision statement is issued, then federal regulators may proceed to make decisions on issuing any required federal approvals and implementing required mitigation.

CEAA Prohibitions

Where a federal EA is in progress, CEAA imposes two important prohibitions on the proponent and federal regulators:

1. It prohibits a project proponent from taking any physical action to implement the project.
2. It prohibits a federal regulator from issuing any approval that would implement the project.

B.1 CEAA Framework to Identify Project Environmental Effects

The purposes of and requirements of CEAA include (i) the promotion of sustainable development, and (ii) the protection of the environment and human health.⁸

CEAA implements a multi-step process to assess the significance of adverse environmental effects from projects. The first step is to *identify* the relevant effects of a designated project. This step involves applying three key defined terms to the relevant factual circumstances. The three key terms are “designated project,” “environment,” and “environmental effects.” There is a cause-effect relationship among these terms: the “designated project” will cause *changes* to the “environment” and these changes will, in turn, cause *effects*. CEAA thus distinguishes between a “change,” which applies to biophysical (non-human) components of the Earth, and an “effect” which applies to human conditions and features.

B.1.1 Classifying the Project as a Designated Project

The CN March 2015 PDR provided sufficient detail for the CEA Agency to conclude that there was a “designated Project” which required EA. The definition of “designated Project” in s.2(1) of CEAA is also relevant to determine the scope of the required environmental assessment:

“designated project” means one or more physical activities that

(a) are carried out in Canada or on federal lands;

(b) are designated by regulations... or an order...; and

(c) are linked to the same federal authority as specified in those regulations or that order.

CEAA Regulations (SOR/2012-147) contain the following designation in its schedule of physical activities linked to the CEA Agency:

25. The construction, operation, decommissioning and abandonment of a new...

(b) railway yard with... a total track length of 20 km or more;

In its PDR, CN stated that the Project will involve the construction of “approximately 4,200 m of additional track along the main-line and approximately 20,510 m of new yard track for a total of approximately 25 km of new track” (page i). Therefore, the CN Project triggers CEAA and makes the CEA Agency the federal authority responsible for meeting CEAA obligations. The CN PDR provides preliminary details on the “Components of Proposed Development.” Section 3.1 within Part 1 of the EIS Guidelines translates these details into fourteen Project components. Consistent with the CEAA definition of “designated



Figure 4: Track Configuration Changes (see Appendix A, Figure 7)

Project” and its inclusion of “physical activities” (not simply physical components or works), the construction or operation of these components constitutes a preliminary list of the physical activities that are “incidental” to the designated Project.

B.1.2 Pathways Approach to Assessment of “Environmental Effects”

CEAA sets out a precise approach to the “environmental effects” that require assessment. The EIS Guidelines summarize the CEAA approach as follows:

Therefore, the EIS must include a full description of the changes the Project will cause to the environment that may result in adverse effects on areas of federal jurisdiction (i.e. section 5 of CEAA 2012) including changes that are directly linked or necessarily incidental to any federal decisions that would permit the Project to be carried out (p 2).

CEAA defines the environment as follows:

“environment” means the components of the Earth, and includes

- (a) land, water and air, including all layers of the atmosphere;
- (b) all organic and inorganic matter and living organisms; and
- (c) the interacting natural systems that include components referred to in paragraphs (a) and (b).

The key term, “components of the Earth” has a biophysical focus. Similarly, although the term “living organisms” includes humans, the scope of components in the rest of the definition—and, particularly, its reference to only “natural systems” in paragraph (c)—is distinct from human socio-economic conditions and cultural features.

Building on this definition of the “environment,” CEAA addresses both changes to the environment and effects on humans. Section 5 of CEAA addresses effects on humans where such effects are caused by changes to the “environment.” The CEA Agency summarizes the CEAA focus on causation as a “pathways” approach to environmental effects.⁹ Thus, for example, trains running along a new track may generate noise that affects nearby Aboriginal peoples. In this example, noise emissions are an environmental change as well as a causal pathway from a project to an effect on Aboriginal peoples.

The purposes of and requirements of CEAA include (i) the promotion of sustainable development, and (ii) the protection of the environment and human health.

B.2 Scope of Environmental Effects to be Considered in CEAA Environmental Assessment

CEAA does not require an assessment of all effects of a designated project; instead, it requires an assessment of effects that fit within its “environmental effects” framework, plus any regulatory or Ministerial expansion of this scope.

B.2.1 Core Environmental Effects: Subsection 5(1) Effects

Subsection 5(1) of CEAA provides the starting point for all EAs and the present panel review. Subsection 5(1) of CEAA specifies all of the environmental effects that every federal EA must take into account, and can therefore be considered the “floor” for federal EAs under CEAA. Factually, the Project does not appear to involve potential biophysical change to federal lands or lands outside of Ontario or Canada. This eliminates consideration of all aspects of s.5(1)(b).

Table B.2.1.A sets out the environmental changes that the panel is required to consider under s.5(1)(a) of CEAA and that apply to the Project.

Table B.2.1.B sets out the “effects” that the panel is required to consider under s.5(1)(c). It deals with effects on Aboriginal peoples that result from a change to the “environment.”

In sum, subsection 5(1) focuses on changes to the biophysical environment that may be caused by a designated project, notably changes to air, water, fish and bird species, and ecosystems. Beyond biophysical effects, all CEAA assessments must examine socio-economic effects on Aboriginal peoples. These are the core topics for consideration and assessment in all federal EAs.

Table B.2.1.A
Environmental Changes and Effects under s.5(1)(a) of CEAA

Listed Component	Pathway: Project change to the “environment” affecting a listed component ¹⁰
<i>Fish and fish habitat</i>	(a) land (on which water may flow to fish and fish habitat) (b) water (providing fish habitat) (c) living organisms (which provide food to fish) (e) natural systems (which support fish and fish habitat)
<i>Aquatic species at risk</i> ¹¹	(a) land (on which water may flow to aquatic species at risk) (b) water (providing habitat for aquatic species at risk) (c) living organisms (which provide food to aquatic species at risk) (e) natural systems (which support aquatic species at risk)
<i>Migratory birds</i>	(a) land (which may provide habitat for migratory birds) (b) water (which may provide habitat for migratory birds) (c) air (which is used by migratory birds) (d) living organisms (which provide food for migratory birds) (e) natural systems (which support migratory birds)

Table B.2.1.B
Environmental Changes and Effects under s.5(1)(c) of CEAA

Listed Component	Pathway: Project change to the “environment” affecting the listed component	Effect: Effects listed in s.5(1)(c)
<i>Aboriginal peoples</i>	(a) land (which may be used by Aboriginal peoples) (b) water (which may be used by Aboriginal peoples or by fish or migratory birds used or valued by Aboriginal peoples) (c) air (which may be used by Aboriginal peoples or by biota that are used or valued by Aboriginal peoples) (d) living organisms (which may be used or valued by Aboriginal peoples) (e) natural systems (which may be used or valued by Aboriginal peoples or by biota used or valued by Aboriginal peoples)	(a) health and socio-economic conditions (b) physical and cultural heritage (c) current use of lands for traditional purposes (d) structure, site or thing of historical, archaeological, paleontological or architectural significance

B.2.2 Additional Environmental Effects Relevant to this Environmental Assessment

CEAA includes several provisions to expand the scope of EA beyond the core topics set out above. Three of these provisions are reviewed below.

1) Environmental effects relevant to federal regulatory approvals

CEAA requires that additional environmental effects be taken into account in an EA where the prerequisites set out in subsection 5(2) are met. They are:

- i. The project must require “a federal authority to exercise a power or perform a duty or function conferred on it under any Act of Parliament other than this Act” (i.e., CEAA itself).
- ii. The environmental effects are:
 - a) changes, other than changes listed in s.5(1)(a) and 5(1)(b), that are “directly linked” or “necessarily incidental” to the federal authority’s exercise of a power or performance of a duty required by the Project; or
 - b) effects, other than effects referred to in s.5(1)(c), on health and socio-economic conditions, physical and cultural heritage, or any structure, site or things that are of historical, archaeological, paleontological, or architectural significance.

Subsection 5(2) applies here because the Project requires one or more federal approvals (other than under CEAA itself).

On May 13, 2015, the CT Agency concluded that the CN Project included new railway lines that will require its approval under s.98 of the CTA. Under that provision, the

CT Agency must determine whether the location of the proposed railway line is “reasonable,” taking three factors into account: requirements for railway operations, requirements for railway services, and the “interests of the localities” that will be affected by the new line. Similarly, s.5(2) of CEAA requires that the environmental assessment of a project requiring such approval take into account (i) any change to the environment that is related to these factors, and (ii) any effect of such change on socio-economic conditions.

Based on CN documents, the Project requires additional federal approvals, which may in turn expand the scope of the EA to address environmental changes and effects that are related to those approvals.

Table B.2.2 sets out these additional required federal approvals.

Table B.2.2 Required Federal Approvals		
No.	Provision	Topic
Approval required by the CT Agency		
1	s.98	<i>Canada Transportation Act</i> approval to establish a new railway line
Required approval identified by PDR		
2	s.35	<i>Fisheries Act</i> authorization to alter fish habitat
3	s.8	<i>National Energy Board Act</i> approval for a new rail line-pipeline crossing of NEB-regulated pipeline
Other federal approvals that may be required¹²		
4	s. 8	<i>Railway Safety Act</i> approval for new railway works
5	s. 101	<i>Canada Transportation Act</i> approval to construct, maintain, or apportion costs of a new road-railway crossing

2) Additional relevant matters the Minister requires that the EA take into account

The second route to expand the scope of an EA beyond the s.5(1) core subjects is the addition by the Minister of “any other matter relevant to the [EA] that...the Minister, requires to be taken into account.”¹³ By letter dated July 20, 2015, the Minister advised the Halton Municipalities of three amendments to the EIS Guidelines. These amendments require that the EIS Guidelines, finalized by the CEA Agency on July 20, 2015, include requirements that the EA take into account the following matters in assessing whether the Project is likely to result in SAEs:

1. municipal land use, including present and approved land uses;
2. human safety in relation to motor vehicle safety and pedestrian/bicycle safety; and
3. human health, including potential changes in air quality, drinking water quality, and noise exposure in the Project vicinity.

It is anticipated that the Minister will finalize the panel terms of reference that specifically reference any additional matters under para 19(1)(j) that are required to support the inclusion of these matters in the EIS Guidelines’ information requirements.

3) Ministerial determination on the scope of seven factors of assessment

The third route to expand the scope of an EA arises from the Minister’s duty to determine the scope of seven factors of assessment listed in s.19(1) of CEAA. These factors include: the “cumulative environmental effects,” the “environmental effects of accidents and malfunctions,” the “alternative means of carrying out the designated project,” and the “significance” of adverse environmental effects. The Minister has not yet made this determination.

B.3 Valued Components of the Environment Identified by the EIS Guidelines

Valued Components (VCs) refer to the environmental features that may be affected by the Project and that have been identified to be of concern by the proponent, government agencies, Aboriginal peoples, or the public. The value of a component relates not only to its role in the ecosystem, but also to the value people place in it.¹⁴

The Minister issued final EIS Guidelines to CN on July 20, 2015. The Guidelines identify key VCs of the biophysical and human environment that could change because of the Project. The Guidelines also advise that their guidance on VCs is preliminary, not final.

This section summarizes the VCs that the EIS Guidelines identify and identifies which of these are relevant to the Halton framework.

Table B.3.A
Summary of Biophysical VCs from EIS Guidelines

No.	Description
<i>A. Land VCs</i>	
A.1	Topography and soil
A.2	Geology and geochemistry
<i>B. Water VCs</i>	
B.1	Groundwater quantity and quality
B.2	Drainage basins
B.3	Surface water bodies
B.4	Surface water quality
<i>C. Air VCs</i>	
C.1	Ambient air quality
C.2	Ambient noise levels on residences
C.3	Ambient night-time light levels
<i>D. Fish and Fish Habitat VCs</i>	
D.1	Fish populations
D.2	Fish or invertebrate species at risk
D.3	Fish habitat (location and functions)
D.4	Suitable habitat for species at risk
D.5	Fish movement
<i>E. Migratory Birds and Habitat VCs</i>	
E.1	Migratory bird species in area
E.2	Migratory bird use of area across all seasons
<i>F. Species at Risk (Terrestrial) VCs</i>	
F.1	Species at risk (in project vicinity)
F.2	Critical habitat (in project vicinity)

**Table B.3.B
Summary of Human VCs from EIS
Guidelines**

No.	Description
<i>G. Health and Socio-economic Conditions</i>	
G.1	Human health conditions
G.2	Human safety conditions
G.3	Rural settings
G.4	Urban settings
G.5	Residential land use: current and future approved
G.6	Urban ICI (industrial, commercial and institutional) land use: current and future approved
G.7	Commercial resource harvesting land use
G.8	Recreational resource harvesting land use
G.9	Recreational water use
<i>H. Traditional Land Use</i>	
H.1	First Nation reserves
H.2	First Nation traditional land use and territory
<i>I. Cultural Heritage</i>	
I.1	Physical and cultural heritage
I.2	Structure, site, or thing of heritage significance (i.e., historical, archaeological, paleontological or architectural significance)

Biophysical VCs

The EIS Guidelines identify multiple environmental components as VCs. Table B.3.A summarizes the guidance from the EIS Guidelines in identifying nineteen (19) biophysical VCs that may be affected by the Project.

Human VCs

The EIS Guidelines also provide preliminary guidance on human VCs that could be affected by the Project. The EIS Guidelines follow the CEAA and distinguish between VCs for Aboriginal peoples (related to s.5(1)(c)) and VCs for people generally (related to s.5(2)(b)). Table B.3.B summarizes the guidance from the EIS Guidelines in identifying thirteen (13) Human VCs that may be affected by the Project.

B.4 Use of Valued Components to Address the Significance of Effects

The thirty-two (32) VCs identified in the EIS Guidelines and summarized in section B.3, provide scope and focus to the federal EA. They are also the starting point in addressing the “factors” of environmental assessment set out in s.19 of CEAA. Section 19 of CEAA makes environmental effects central to the several listed “factors of assessment.” Section 19 lists nine (9) factors of assessment and also makes provision for the addition of “any other matter relevant to the environmental assessment.” Seven of these factors are expressly related to the topic of “environmental effects,” as follows:

- s. 19(1)(a) environmental effects
- s. 19(1)(a) environmental effects of malfunctions or accidents
- s. 19(1)(a) cumulative environmental effects
- s. 19(1)(b) significance of environmental effects
- s. 19(1)(d) mitigation of environmental effects
- s. 19(1)(f) follow-up program to monitor environmental effects
- s. 19(1)(g) environmental effects of alternative means of carrying out Project

For any effect taken into account through ss. 5 and 19, CEAA requires an assessment of whether there is likely to be an SAEE.

The CEA Agency identifies two relevant

sources of guidance on how to assess the significance of adverse environmental effects. Most recently, in 2015, the Agency published an Operational Policy Statement (OPS) entitled, “*Determining Whether a Designated Project is Likely to Cause Significant Adverse Environmental Effects under the Canadian Environmental Assessment Act, 2012.*” This Statement identifies six criteria to consider when assessing significance. Table B.4.A summarizes the meaning of each criterion.

Notably, the magnitude of an effect is to be assessed relative to baseline or “standards, guidelines or objectives.”

Similarly, the CEA Agency OPS provides four “contexts” for characterizing an effect as “significant.” The following table summarizes these contexts. Two of these four contexts directly reference VCs; the third context focuses on VCs that are important to the functioning of an ecosystem, and the fourth focuses on VCs for which a target has been established.

Current CEA Agency guidance thus provides that the assessment of the significance of adverse environmental effects should include consideration of established standards, including targets, guidelines, and objectives.

Table B.4.A
Criteria to Assess Effects as “Significant”

No.	Criterion	Meaning of Criterion
(1)	Magnitude	Amount of change in a measurable parameter (relative to baseline or standards, guidelines or objectives)
(2)	Geographic Extent	Spatial area subject to the predicted effect
(3)	Timing	If effect varies seasonally, the sensitivity of effects during different seasons
(4)	Frequency	How often an effect occurs during a given time period
(5)	Duration	Length of time that an effect is discernible
(6)	Reversibility	Capacity of valued component to recover from the environmental effect

Table B.4.B
Summary of Contexts for Assessing Effects as “Significant”

No.	CEA Agency description of context	Summary of context
(1)	a unique characteristic of the area (e.g., proximity to park lands, ecologically critical or fragile areas, valuable heritage resources)	Special Feature
(2)	unique values or customs of a community that influence the perception of an environmental effect (including cultural factors)	Cultural Feature
(3)	a valued component that is important to the functioning of an ecosystem, ecological community, or community of people	Ecological Feature
(4)	a valued component for which a target has been established	Established Target

Current CEA Agency guidance provides that the assessment of the significance of adverse environmental effects should include consideration of future adverse effects in relation to established standards, including targets, guidelines, and objectives.

Part C

Constitutional Implications of this Project

Constitutional principles arise from Canadian federalism. Canada's constitutional division of powers requires that provincial powers, including those that provinces delegate to municipalities and other regional and local bodies such as conservation authorities, be respected alongside federal powers.

There are two particularly important constitutional developments with respect to this Project. The first is the recent federal change in CN's railway ownership and operations to private ownership from former status as federal Crown ownership¹⁵ and operations. Among other things, this means that CN's lands—including the lands on which CN proposes for the Project—are no longer "federal" lands and are, therefore, subject to constitutionally appropriate provincial and municipal regulation. The second development is the courts' narrowing of federal paramountcy over provincial and municipal laws to respect the legislative mandates and operational sophistication of local governments, particularly municipalities in Canada's urban areas.¹⁶

Based on Canada's constitutional division of powers between the federal Parliament and provincial legislatures, there have been many federal-provincial discussions and several agreements over EA responsibilities.¹⁷ These agreements recognize that, apart from projects that are located entirely on federal lands, provinces have lead responsibility for all other EAs within provincial boundaries. Further, Canada and Ontario have recognized the role of municipalities in EA for projects within municipal boundaries.¹⁸

Based on the Project location, Ontario and the Halton Municipalities have constitutionally valid regulatory roles within their jurisdiction. Provincial, regional, and local regulatory jurisdiction over the Project is engaged for the following reasons:

1. All land uses on private (i.e., non-Crown) lands within Halton and Milton are subject to municipal zoning by-laws.
2. Project operation will involve more than 1,600 daily container truck trips 24/7 on municipal roads.
3. Project construction and operations include new non-railway construction and operations that require municipal services and approvals.
4. Project activities to take and discharge water require municipal services and/or provincial approvals.
5. Project activities to relocate a watercourse and alter lands within a regulatory flood plain require provincial and regional conservation authority approvals.
6. Project activities to affect the habitat for endangered species engage provincial laws and may require provincial approvals.¹⁹
7. Project activities to increase local air emissions engage provincial laws and may require provincial and/or municipal approvals.
8. Project activities affecting archaeological resources engage provincial laws and may require provincial approvals.²⁰

Equally, although the Project does not involve and will not be located on any federal lands, the Project has aspects that are regulated federally. Federal statutes regulate new federal rail lines, new rail crossings of roads and pipelines, the killing of fish or migratory birds, and serious harm to fish habitat.

For the Project, the purposes of the federal, provincial, regional, and local laws are aligned: they are to ensure that the Project does not have unacceptable effects on the environment and surrounding areas.

Recognizing that this Project involves multiple regulatory jurisdictions, regulation of the Project involves three key questions on the applicable constitutional law principles.

First Question: immunity of federal Crown and federal undertakings

To what extent, if at all, does the immunity of the federal Crown and federal undertakings from provincial and municipal laws apply to the Project?

The 1995 privatization of CN affects the scope of this immunity because it changed all CN land from federal Crown land to private land. Federal Crown land is constitutionally excluded from provincial and municipal regulation; private land is not. Some constitutional immunity applies to federal undertakings such as railways, but this immunity does not provide the same blanket exemption from provincial or municipal laws as applies to federal Crown land. Instead, this immunity is narrow and applies only where a provincial or municipal law impairs a vital part of the management and control of the federal undertaking.²¹ Importantly, this principle of partial immunity does not prevent a municipality from issuing an order against a federal undertaking to prevent certain effects on municipal interests such as those listed above.

Second Question: paramountcy of federal laws

To what extent does the paramountcy of federal laws over provincial or municipal laws apply to this Project?

At one time, the existence of a valid federal law meant that the federal law “occupied the field” and ousted the application of any provincial or municipal law or standard with respect to that subject matter. Federal paramountcy is now much more limited. There is no longer any principle of “occupying the field”; instead, a valid provincial or municipal law may apply in a field covered by federal law unless one of two tests is met.

Example 1: Judicial Consideration of Information in federal EA and regulatory approvals *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 SCR 3 at 65–66

In my view the solution to this case can more readily be found by looking first at the catalogue of powers in the Constitution Act, 1867 and considering how they may be employed to meet or avoid environmental concerns. When viewed in this manner it will be seen that in exercising their respective legislative powers, both levels of government may affect the environment, either by acting or not acting...

To continue with the example, one might postulate the location and construction of a new line which would require approval under the relevant provisions of the Railway Act, R.S.C., 1985, c. R-3. That line may cut through ecologically sensitive habitats such as wetlands and forests. The possibility of derailment may pose a serious hazard to the health and safety of nearby communities if dangerous commodities are to be carried on the line. On the other hand, it may bring considerable economic benefit to those communities through job creation and the multiplier effect that will have in the local economy. The regulatory authority might require that the line circumvent residential districts in the interests of noise abatement and safety. In my view, all of these considerations may validly be taken into account in arriving at a final decision on whether or not to grant the necessary approval. To suggest otherwise would lead to the most astonishing results, and it defies reason to assert that Parliament is constitutionally barred from weighing the broad environmental repercussions, including socio-economic concerns, when legislating with respect to decisions of this nature.

The first test is that it is impossible to comply with both the federal law and the provincial or municipal law. Notably, the mere fact that a provincial or municipal law is more onerous than the applicable federal law does not constitute a conflict between those laws. This is because it is possible to comply with both the more rigorous provincial or municipal law and the less rigorous federal law. As for this Project, the federal, provincial, regional, and local laws do not conflict; rather, they work together to regulate the effects of the Project on the environment and surrounding land uses in Halton.

The second test is that the provincial or municipal law “frustrates the purpose” of the federal law. If it does, then the provincial or municipal law does not apply and the federal law alone applies. For this Project, the purposes of the federal, provincial,

regional, and local laws are aligned: they are to ensure that the Project does not have unacceptable effects on the environment and surrounding areas. The application of provincial, regional, and local laws to the Project will not frustrate the purpose of federal law in any way.

Third Question: consideration of non-federally regulated environmental effects

To what extent may federal EA consider effects which are not federally regulated?

Constitutional law distinguishes between the power to regulate and the power to gather information. A decision maker is entitled to consider information on many topics even if it cannot regulate with respect to those topics. In *Friends of the Oldman River Society v. Canada (Minister*

Example 2: Judicial Consideration of Information in federal EA and regulatory approvals
Friends of the Oldman River Society v. Canada (Minister of Transport), [1992] 1 SCR 3 at 39–40

The inconsistency contended for is that the Navigable Waters Protection Act implicitly precludes the Minister of Transport from taking into consideration any matters other than marine navigation in exercising his power of approval under s. 5 of the Act, whereas the Guidelines Order requires, at a minimum, an initial environmental impact assessment. The appellant Ministers concede that there is no explicit prohibition against his taking into account environmental factors, but argue that the focus and scheme of the Act limit him to considering nothing other than the potential effects on marine navigation. If the appellants are correct, it seems to me that the Minister would approve of very few works because several of the “works” falling within the ambit of s. 5 do not assist navigation at all, but by their very nature interfere with, or impede navigation, for example bridges, booms, dams and the like. If the significance of the impact on marine navigation were the sole criterion, it is difficult to conceive of a dam of this sort ever being approved. It is clear, then, that the Minister must factor several elements into any cost-benefit analysis to determine if a substantial interference with navigation is warranted in the circumstances.

It is likely that the Minister of Transport in exercising his functions under s. 5 always did take into account the environmental impact of a work, at least as regards other federal areas of jurisdiction, such as Indians or Indian land. However that may be, the Guidelines Order now formally mandates him to do so, and I see nothing in this that is inconsistent with his duties under s. 5. As Stone J.A. put it in the Court of Appeal, it created a duty which is “superadded” to any other statutory power residing in him which can stand with that power.

of Transport) (1992), the Supreme Court of Canada provided two examples.

The first example concerns railways. In this example, the Court established that a federal regulatory approval over a new railway line may validly take into account many matters that are normally considered local rather than federal, such as wetlands and forests, hazards to health and safety of nearby communities, the avoidance of residential districts in the interests of noise abatement and safety, job creation, and the local economy.

Consistent with this first example, a federal regulatory authority may consider “local” impacts. The CT Agency follows this approach in requiring consideration of the “interests of the localities” under a s.98 CTA approval. CEAA also follows this approach: it authorizes the Minister to require an EA

to take into account any other matter relevant to the EA. It is anticipated that the Minister will require that this EA take into account local effects, since the previously finalized EIS Guidelines require that this EA take into account three types of local effect, including present and future land uses. CEAA also enables the panel to gather information that is not tied to specific federal regulatory powers. The clearest example of this point is the panel’s statutory power to use any available information under s.44 of the CEAA.

The Supreme Court’s second example concerns a federal decision maker considering whether to issue an approval for a work affecting navigation. In this example, a federal decision maker is entitled to consider information about a variety of non-navigation topics in order to determine

whether, overall, there is public benefit to issuing the navigation approval.

The Court also stated that federal EA (referred to as the *Guidelines Order*²²) may be characterized as “superadded” to federal regulatory regimes. This means that the EA adds a range of considerations to those considerations that are part of a federal regulatory approval under a non-EA statute. CEAA follows this approach: s.5(1) adds a range of considerations applicable to all federal EAs, and s.5(2) requires the EA to take into account any environmental consideration that is part of a federal regulatory approval under a non-EA statute.

In sum, applying Halton’s effect-based standards of general application to the Project is both (i) consistent with constitutional principles, and (ii) consistent with the focus of CEAA on assessing projects for their likelihood of causing SAEs.

Moreover, following this path will place the ultimate decision resulting from this federal panel on solid and cooperative footing with the other levels of government that have a stake in the Project.

Part D

Applying Land Use Standards to Assess Significant Effects

D.1	Integration of the Federal EA Framework with the Halton Land Use Planning Network
D.2	ROP Effects-based Standards of General Application
D.3	Water
D.4	Natural Heritage
D.5	Transportation
D.6	Agriculture
D.7	Residential
D.8	Employment

of the “environment”: this encompasses the biophysical world (land, water, air, organic and inorganic matter, living organisms, and interacting natural systems involving these features). CEAA effects include effects on migratory birds and fish (including fish habitat). The Halton framework for biophysical effects is broader.

- Project effects on transportation build on requirements for federal regulatory approval: CN requires railway line approval under the Canada Transportation Act (“CTA”), and may also require approval for noise effects from the railway, as these are regulated by the CTA. Transportation effects also

D.1 Integration of the Federal EA Framework with the Halton Land Use Planning Framework

The Halton land use planning framework may be integrated with the CEAA framework.

The integration of the federal EA framework under CEAA with the Halton land use planning framework has the following components:

- Priority to good planning: both the CEAA and Halton frameworks involve planning processes, with CEAA focused on EA planning and Halton focused on land use planning.
- Project effects organized under six topics: water, natural heritage, transportation, agricultural, residential, and employment.
- Project effects on water and natural heritage build on the CEAA definition

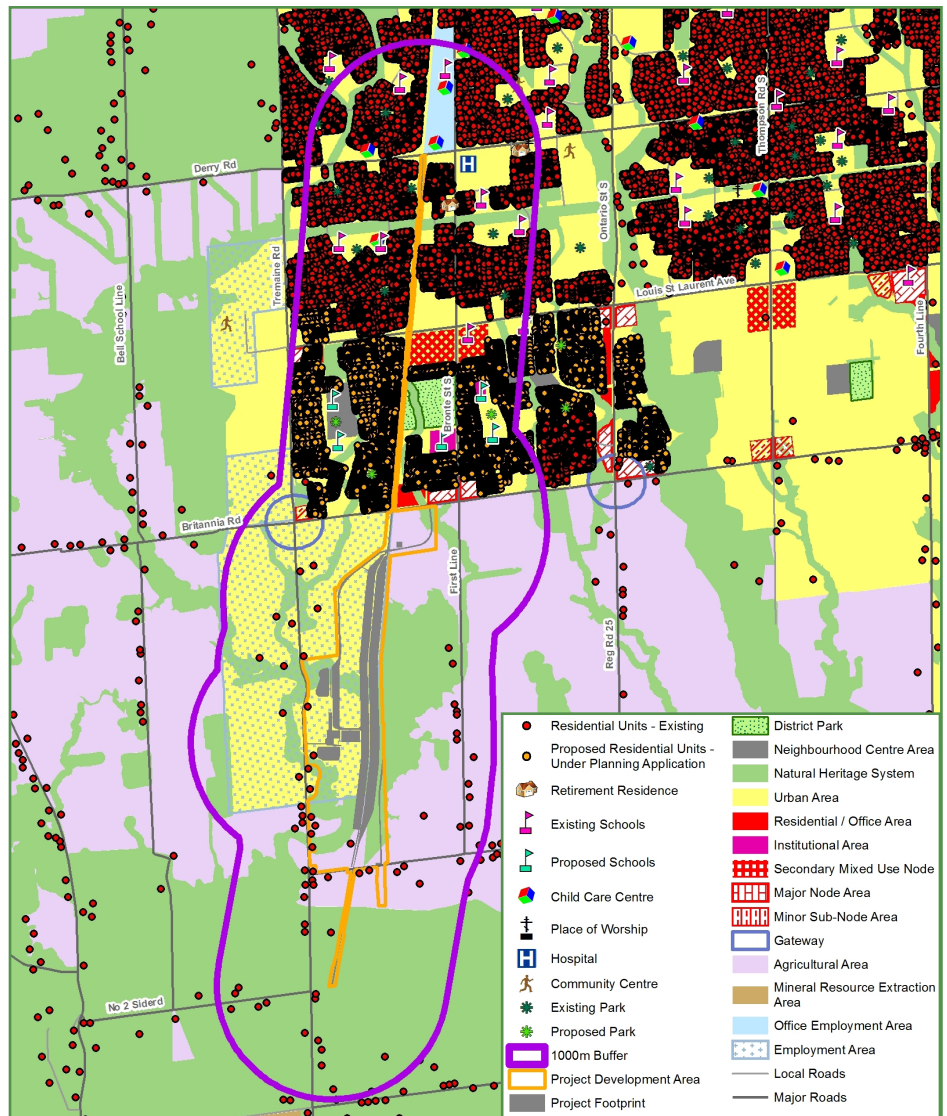


Figure 5: All Sensitive Land Uses (see Appendix A, Figure 32)

include the matters required to be addressed by the July 20, 2015 EIS Guidelines, which require that the EA take into account land use and human safety in relation to motor vehicle safety and pedestrian/bicycle safety. The Halton framework for transportation effects engages municipal controls over road access, road improvements, and truck use of municipal roads.

- Project effects on lands used and designated for agriculture fit within the CEAA definition of the “environment”: these effects also engage Ontario’s plans and municipal controls to preserve rural agricultural lands by limiting growth outside urban boundaries. The Project, and the CN lands on which it is to be built, sits on both sides of the Halton boundary between urban and rural lands.
- Project effects on residents and lands designated for new urban residential uses: these effects fit within the CEAA framework for:
 - air, noise, and night-time lighting effects from new railway lines and operations,
 - the CEA Agency July 20, 2015 guidance (through the EIS Guidelines) that the panel take into account municipal land use, including present and approved land uses, and human health, including potential changes in air quality, drinking water quality, and noise exposure, and
 - the CTA s. 98 requirement to take into account the “interests of the localities” in considering whether to approve new railway lines. This topic also engages municipal controls for effects caused by expanded road use and truck operations arising from the Project and future use of CN lands.

- Project effects on lands designated for employment: these effects fit within the CEAA framework through changes to existing land, the July 20, 2015 EIS Guidelines which require that the panel take into account municipal land use, including present and approved land uses, and the s.5(2) requirement to take into account effects related to the “interests of the localities” under the CTA in considering whether to approve new railway lines. ROPA 38 addresses employment lands as part of a comprehensive approach to growth management that integrates land use with environmental and fiscal imperatives. It implements Ontario’s GGH Growth Plan across all of Halton and Milton. Consistent with Ontario’s Growth Plan, ROPA 38 implements Ontario’s employment density targets and policies to intensify and manage growth within urban boundaries and limit growth outside urban boundaries. ROPA 38 also implements Halton’s multi-year review of its development and infrastructure needs and appropriate phasing of each from 2011 to 2031.

D.2 ROP Effects-based Standards of General Application

The Halton land use planning framework provides effects-based standards of general application that address the majority of biophysical VCs identified in the EIS Guidelines. These standards also address virtually all human VCs identified in the EIS Guidelines that are relevant to the Project.

CEA Agency guidance on assessing whether an adverse environmental effect is “significant” pays specific regard to standards, targets, guidelines, and objectives.

The ROP and CEAA share a common interest in systems. CEAA references “natural systems” in its definition of the “environment.” The ROP references Halton’s

“natural heritage system,” “agricultural system,” and “transportation system,” but also provides systematic treatment of “water,” “residential lands,” and “employment lands” across the Region.

These six topics provide a framework to link the ROP to CEAA. Each topic encompasses one or more VCs from the CEAA framework.

The six topics linking the Regional Official Plan to the VCs in the CEAA framework also address SAEEs. For each of the six ROP topics, this section sets out relevant effects-based standards of general application. These standards provide assistance in assessing whether the Project is likely to cause an SAAE. For ease of reference, Appendix B, “Valued Components & Significant Adverse Environmental Effects,” provides more detail as well as other relevant municipal and provincial standards.

**Applying
Halton’s effects-based standards
of general
application to the
Project is both
(i) consistent with
constitutional
principles, and
(ii) consistent with
the focus of the
CEAA on assessing
projects for their
likelihood of
causing SAEEs.**

D.3 Water

Water is relevant to this Project because the Project proposes to alter drainage patterns, relocate a watercourse on site, meet its water supply needs through one or more private wells drawing groundwater from aquifers, and meet its wastewater discharge needs through one or more private sewage works discharging into local watercourses.

Water is a component of the environment defined by CEAA, but it is not expressly referenced in the framework for environmental effects in section 5. Nor is water the subject of any federal approval required for the Project under s.5(2) of CEAA; however, water is relevant under s.5(2) where it is a pathway to changes and effects that require federal approval, such as changes to fish habitat requiring approval under the federal *Fisheries Act*.

By contrast, the Province has broad jurisdiction and regulatory authority over water resources. The 2005 Greenbelt Plan identifies and protects a provincial water resource system. Further, the Province has delegated broad planning authority over water resources to municipalities and regional watershed-based conservation authorities. By law, the Province requires watershed planning in order to restrict development in or near watercourses, wetlands, valleylands, and flood plains, and to provide source water protection of drinking water. Since 2005, the PPS has required planning authorities such as the Region to protect the quality and quantity of water by, among other things, using the watershed as the ecologically meaningful scale for integrated and long-term planning, and identifying water resource features and functions that are necessary for the hydrological and ecological integrity of the watershed.

The ROP gives specific attention to water and implements provincial standards to protect water resources and features from negative development impacts. It provides four standards of general application that are relevant to assessing this Project. These standards focus on protecting sensitive surface water and groundwater features, water quality and quantity in urban areas, groundwater quality, and watercourses.

These ROP water standards should be read in conjunction with provincial laws and regulations and, in particular, laws and regulations administered by regional conservation authorities such as Conservation Halton.

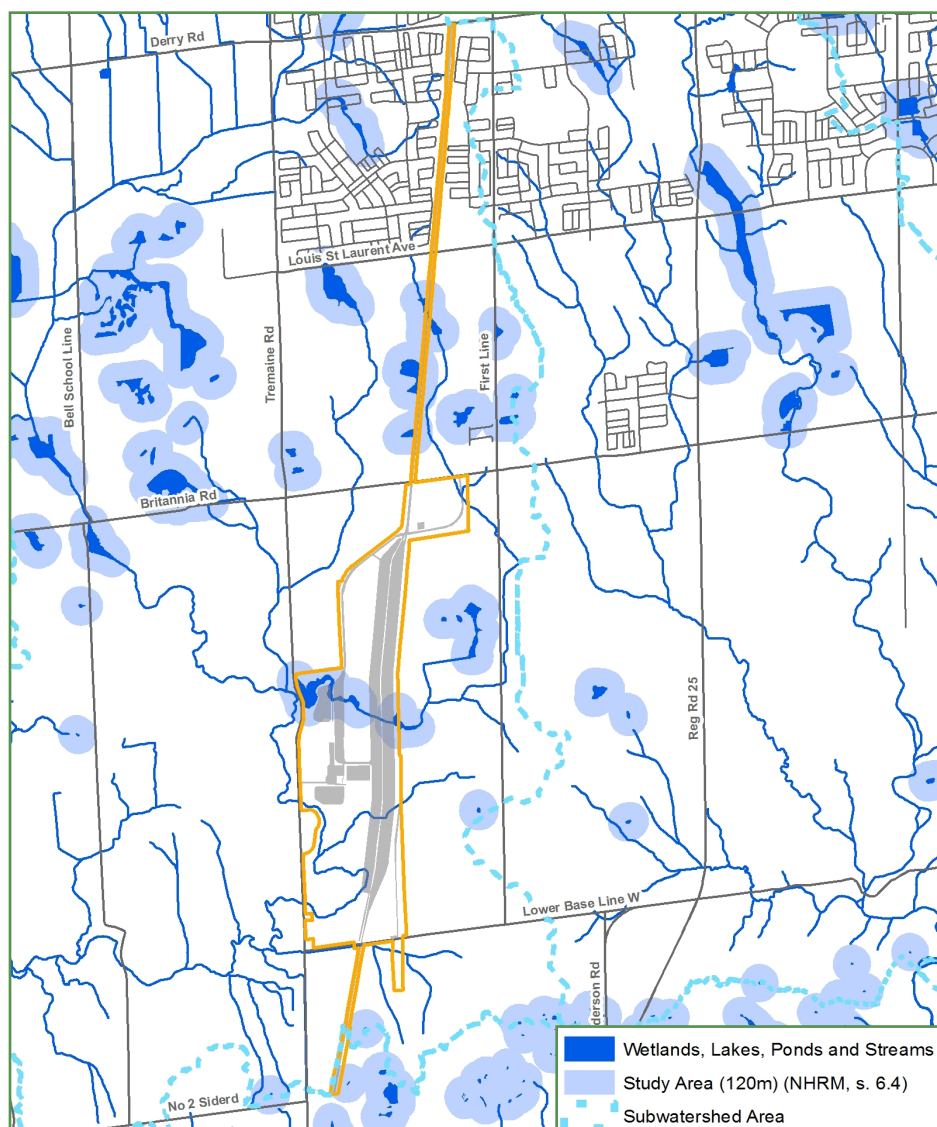


Figure 6: Study Area for Water Features (see Appendix A, Figure 10)

**Table D.3
Regional Official Plan Standards for SAEEs on Preliminary VCs—Water**

VCs from the ROP	Regional Official Plan Standard	Test for Significant Adverse Environmental Effect	VCs from EIS Guidelines
Sensitive surface and groundwater features	To restrict development and site alteration in or near sensitive surface water or groundwater features to protect, improve or restore such features (ROP Reference 145(23))	Physical activity or change in or near sensitive surface or groundwater feature which is likely to harm the feature or its functions	B.1 Groundwater quantity and quality B.2 Drainage basins B.3 Surface water bodies
Urban water quality and quantity	To permit development in the Urban Area on private wells and/ or private sewage disposal systems only on an interim basis until urban service is available (ROP Reference 89(4))	Physical activity in the Urban Area which is proposed to be on private servicing for more than interim period	B.1 Groundwater quantity and quality B.3 Surface water bodies B.4 Surface water quality G.4 Urban settings G.6 Urban ICI land use: current and future approved
Groundwater quality	To consider approval of development proposals only when the site complies with Provincial guidelines, Regional standards and other requirements regarding groundwater quality (ROP Reference 147(18))	Physical activity on site which does not meet Provincial or Regional water quality standards or guidelines	B.1 Groundwater quantity and quality
Watercourses	To ensure that Key Features, which include watercourses that are within a Conservation Authority Regulation Limit or that provide a linkage to a wetland or a significant woodland, are protected (ROP Reference 115.3, 101(1.9))	Physical activity or change which does not protect watercourses that are CA regulated or that link wetlands or significant woodlands	B.3 Surface water bodies B.4 Surface water quality

D.3.1 ROP Water VCs and Standards

Table D.3 (a) summarizes the water VCs from the ROP that could be affected by the Project; (b) sets out the corresponding ROP effects-based standards of general application for the water resources and watersheds in the area of the Project; and (c) lists the VCs identified in the EIS Guidelines (summarized in Tables B.3.A and B.3.B) addressed by each ROP standard.

Appendix A provides additional visual details on the water system and potential impacts.

Appendix B provides additional details on each of the four water standards identified in Table D.3

D.4 Natural Heritage

Natural heritage is relevant to the Project because the Project location includes and abuts lands designated for protection under the Halton Regional Natural Heritage System and lands designated for permanent protection under the Ontario Greenbelt Plan.

CEAA addresses broadly the components of the physical and biological environment, including “natural systems,” in its definition of the “environment”; however, through s.5(1), it focuses exclusively on three specific components of the biological environment: (1) fish and fish habitat, (2) aquatic species at risk, and (3) migratory birds. A similar focus arises in relation to s.5(2) of CEAA, as CN has identified the need for approval under s.35 of the *Fisheries Act* for the Project’s permanent alteration of fish habitat. These three topics are also the exclusive focus of the VCs identified in the EIS Guidelines.

By contrast, the Province has broad jurisdiction and regulatory authority over natural heritage features and systems. The 2005 Greenbelt Plan protects a provincial natural heritage system. Also beginning in 2005, the PPS demanded the maintenance, restoration, and (where possible) improvement of the ecological function and biodiversity of natural heritage systems. Further, beginning in 2005, the PPS demanded that a broad array of significant natural features be protected from any negative impacts due to development or site alteration, namely: significant wetlands, woodlands, valleylands, wildlife habitat, and areas of natural and scientific interest, as well as fish habitat and the significant habitat of endangered and threatened species.

Building on the PPS, the ROP gives greatest importance to protecting the Regional Natural Heritage System. It uses this system

to provide protection to all individual components or features within the system. Like the PPS, the ROP provides standards that apply throughout the Region to protect natural features and their ecological functions from negative impacts due to development or site alteration. Key Features under the ROP are essentially those “natural heritage features and areas” listed in the 2014 PPS,²³ as well as the Key Features listed in the Greenbelt Plan. The ROP Natural Heritage System also includes and protects enhancement areas, linkages between features, and buffers around features.

Through this approach, the Region protects all important habitat used by species in their life functions and protects biodiversity in the Region.

The Ontario *Endangered Species Act, 2007* (ESA) provides express protection of all species at risk within Ontario borders and their habitat. Consistent with this law, the ROP addresses all species at risk (also termed “endangered species” in Ontario), not just aquatic species at risk. To do so, ROP goals include protecting the Region’s biodiversity (flora and fauna) for future generations. Its policies under the

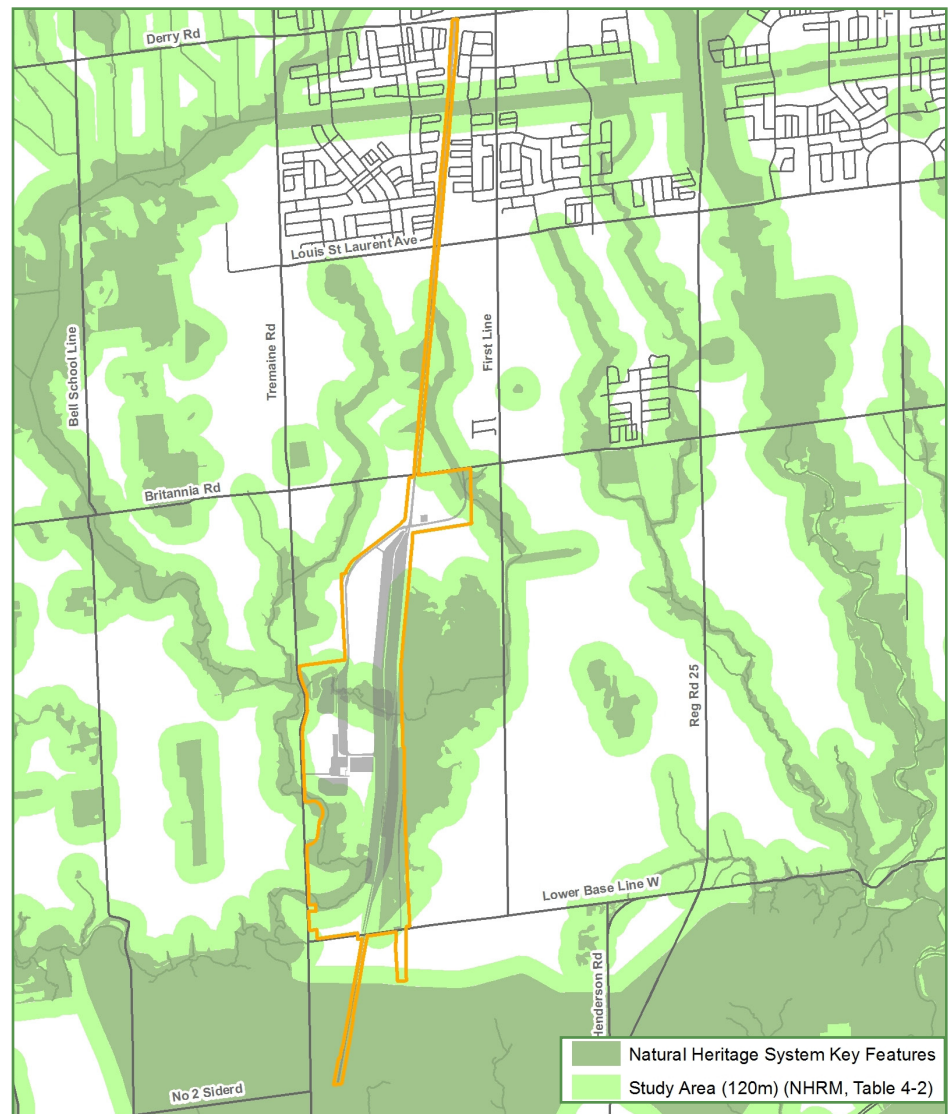


Figure 7: Natural Heritage System Study Area (see Appendix A, Figure 16)

**Table D.4
Regional Official Plan Standards for SAEEs on Preliminary VCs—Natural Heritage**

VCs from the ROP	Regional Official Plan Standard	Test for Significant SAAE	VCs from the EIS Guidelines
Components of the Regional Natural Heritage System	<p>To apply a systems-based approach to implementing the Regional Natural Heritage System by not permitting the alteration of any components of the Regional Natural Heritage System unless it has been demonstrated that there will be no negative impacts on the natural features and areas or their ecological functions (ROP Reference 118(2))</p> <p>The Regional Natural Heritage System is a systems approach to protecting and enhancing natural features and functions and is scientifically structured on the basis of the following components:</p> <p>(1) Key Features, which include:</p> <ul style="list-style-type: none"> a) significant habitat of endangered and threatened species, b) significant wetlands, c) significant coastal wetlands, d) significant woodlands, e) significant valleylands, f) significant wildlife habitat, g) significant areas of natural and scientific interest, h) fish habitat,²⁴ <p>(2) enhancements to the Key Features including Centres for Biodiversity,</p> <p>(3) linkages,</p> <p>(4) buffers,</p> <p>(5) watercourses that are within a Conservation Authority Regulation Limit or that provide a linkage to a wetland or a significant woodland, and</p> <p>(6) wetlands other than those considered significant (ROP Reference 115.3)</p>	Physical activity or change which is likely to cause a negative impact on any feature or function that is part of the Regional Natural Heritage System	<p>A.1 Topography & Soil</p> <p>D. Fish and Fish Habitat VCs</p> <p>F. Species at Risk (Terrestrial) VCs</p> <p>G.8 Recreational resource harvesting land use</p> <p>G.9 Recreational water use</p>
Migratory bird habitat which is not currently included within the Regional Natural Heritage System, but should be	To ensure that Key Features that may exist outside the Regional Natural Heritage System are protected (ROP Reference 101(1.9))	Physical activity or change which is likely to cause a negative impact on migratory bird habitat which should be included in the Regional Natural Heritage System	E. Migratory Birds and Habitat VCs

authority of the *Planning Act* protect endangered species by protecting their significant habitat.

Consistent with the provincial focus on natural heritage systems and species' habitat, the ROP does not directly address fish species (e.g., populations and fish movement) or migratory bird species in the area. Both kinds of species present additional complexity because municipalities and the province must recognize federal jurisdiction over fisheries and migratory birds. This federal jurisdiction limits local and municipal controls where such controls conflict with federal controls.

Although there is federal and provincial legislation on endangered flora and fauna, the Province has lead regulatory authority on all species other than aquatic flora and fauna (which are federally regulated without geographic restriction). Thus, all terrestrial species at risk are regulated by the Province unless they are located on federal lands. As has previously been stated, the Project involves no federal lands, so the key standards for terrestrial flora and fauna at risk are found in Ontario ESA.

D.4.1: ROP Natural Heritage VCs and Standards

Table D.4 (a) summarizes the natural heritage VCs from the ROP that could be affected by the Project; (b) sets out the corresponding ROP effects-based standards of general application for the natural heritage system and features in the area of the Project; and (c) lists the VCs identified in the EIS Guidelines (summarized in Tables B.3.A and B.3.B) addressed by each ROP standard.

Appendix A and B provide additional visual details and support for all ROP standards.

D.5 Transportation

Transportation is relevant to the Project because the Project constitutes a major transportation facility, but is not identified in the ROP. The ROP identifies only existing railway lines. The proposed location is also relevant to the Region's transportation network as it abuts two regional roads. One of these, Britannia Road (to the north), has been approved for major expansion, and this expansion is underway. This Project location also raises issues for active transportation (i.e., walking and cycling) because this location is across the street from existing and planned residential communities north of Britannia Road.

CEAA does not address transportation as a component of the environment; however, through s.5(2) it requires consideration of transportation effects where they result from a change to the environment that is directly related or necessarily incidental to a federal approval required by a project. For this Project, CN requires federal approvals for new railway lines and a pipeline crossing. It may also require federal approvals for new railway works, including crossings. Further, the EIS Guidelines require that this EA consider three topics that are relevant to transportation effects of the Project: (1) municipal land use, including present and approved land uses; (2) human safety in relation to vehicle, bicycle and pedestrian transportation; and (3) human health in relation to air quality and noise exposure. The key VCs for this topic are "Urban Settings"²⁵ and "Human Safety Conditions."²⁶

Ontario has broad jurisdiction and regulatory authority over land-based transportation, particularly road transportation, but also transit, active transportation, and local railways. Since the 2005 PPS, the Province has required that land

use planning address transportation systems. This system expressly encompasses all land-based transportation facilities, including existing airports, harbours, and rail facilities as well as intermodal facilities, transit, highways, sidewalks, and cycling lanes. The 2006 Growth Plan identifies and addresses a transportation system across the Greater Golden Horseshoe and also includes plans and locations for future provincial transportation facilities to move people (public transit) and goods (highways). Provincial goals for this system include providing connectivity among transportation modes to move people and goods, offering transportation

choices that reduce reliance upon a single mode of transportation, and promoting public transit and active transportation (cycling and walking).

Building on the PPS and Growth Plan, the ROP addresses a regional transportation system. The ROP establishes three effects-based standards of general application that are relevant to the Project's effects on transportation. These standards address all existing and planned major transportation facilities known to the Region at the time of ROPA 38. The ROP standards also address land use compatibility between railway line facilities and sensitive land

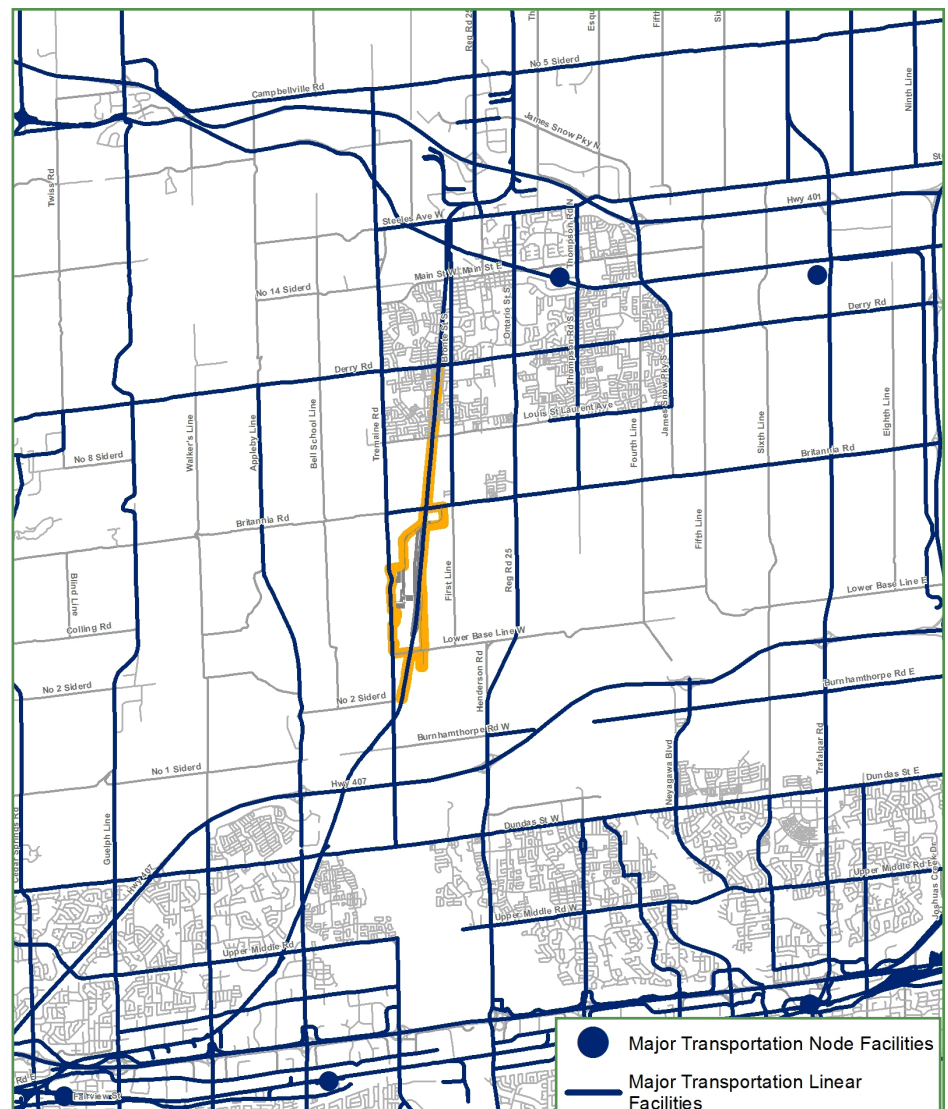


Figure 8: Major Transportation Facilities (see Appendix A, Figure 23)

**Table D.5
Regional Official Plan Standards for SAEEs on Preliminary VCs—Transportation**

VCs from the ROP	Regional Official Plan Standard	Test for Significant Adverse Environmental Effect	VCs from the EIS Guidelines
Major Transportation Facilities	To adopt a functional plan of major transportation facilities for the purpose of meeting travel demands for year 2021 as well as protecting key components of the future transportation system to meet travel demands beyond year 2021 (ROP Reference 173(1))	New major transportation facility that adds travel demands but is not in the Region's functional plan	G.2 Human safety conditions G.4 Urban settings G.5 Residential land use: current and future approved G.6 Urban ICI land use: current and future approved
Planned Transportation Corridors	To plan for and protect planned corridors and rights-of-way for transportation and transport facilities to meet current and projected needs (ROP Reference 173(1.1))	New unplanned corridor to meet new transportation needs	G.2 Human safety conditions G.4 Urban settings G.5 Residential land use: current and future approved G.6 Urban ICI land use: current and future approved
Railway Networks and Crossings	To support the provision of a safe and efficient railway network by securing grade separations of railways and arterial roads where warranted, supporting the monitoring and necessary actions to improve the safety of the movement of dangerous goods by rail, and ensuring where possible compatible uses adjacent or in proximity to railway corridors and terminal facilities including railway yards and intermodal facilities (ROP Reference 147(18))	(1) New unsafe rail-road grade crossing (2) New unsafe movement of dangerous goods (3) New land use incompatibility adjacent to or in proximity to railway corridors or facilities	G.2 Human safety conditions G.4 Urban settings G.5 Residential land use: current and future approved G.6 Urban ICI land use: current and future approved

uses and demand safe railway networks, crossings, and transportation of dangerous goods.

The ROP does not address use of navigable waterways which, as is stated above, is a relevant topic because the Project includes relocation of a watercourse. Since Parliament amended its legislation on navigation²⁷ to narrow its scope from any possible navigable waterway to only designated waterways, there would be a regulatory gap unless municipalities or the Province intervene. Although there is federal jurisdiction and legislation on this topic, there is also jurisdiction and room for future provincial and municipal laws on this topic, particularly as concerns recreational water use.

D.5.1 ROP Transportation VCs and Standards

Table D.5 (a) summarizes the transportation VCs from the ROP that could be affected by the Project; (b) sets out the corresponding ROP effects-based standards of general application for the transportation system and facilities in the area of the Project; and (c) lists the VCs identified in the EIS Guidelines (summarized in Tables B.3.A and B.3.B) addressed by each ROP standard.

Appendix A and B provide additional visual details and support for all ROP standards.

D.6 Agriculture

Agriculture and agricultural lands are relevant to the Project because some of CN's physical activities and future works are proposed for prime agricultural areas.

CEAA does not refer to agriculture as a component of the "environment"; however, effects on Aboriginal agriculture could be "environmental effects" under s.5(1)(c). Equally, changes to land used for non-Aboriginal agriculture could be included under s.5(2), where such changes are directly related or necessarily incidental to a federal approval required for the Project. For effects on non-Aboriginal agriculture to be considered under s.5(2), there must be a federal approval that assesses changes to environment, and these environmental changes must cause effects on non-Aboriginal agriculture.

The required federal approvals for the Project do not expressly address the pathways that give rise to broad review of environmental effects on human health or socio-economic conditions; however, the s.98 CTA approval requires consideration of the "interests of the localities" that will be affected by the new railway lines. Therefore, this topic becomes relevant to CEAA through the Region or Town. Additionally, the EIS Guidelines finalized for the Project require that the EA consider municipal land use, including present and approved land uses. The three VCs for this topic address three distinct aspects of agriculture and agricultural lands.

Ontario has broad authority over and interest in agriculture and agricultural lands. Since the late 1970s and its issuance of "The Provincial Foodland Guidelines," the Province has issued policy statements to land use authorities to protect agricultural lands. The 2005 Greenbelt Plan seeks to provide permanent protection from non-agricultural development to agricultural lands inside the Greenbelt. Similarly, since 2005 the PPS has required that prime agricultural areas be protected for long-term agricultural use.

The Regional Official Plan implements these provincial standards of protection of prime agricultural areas and agricultural activities. The ROP also provides important guidance and standards that go beyond provincial standards. First, the ROP also speaks of "landscape permanence" as the Region's fundamental value in land use planning and its guide to decisions and actions. Second, the ROP gives express recognition to the agricultural system in the Region as a means of enhancing these provincial standards. The ROP directs non-farm uses of land to the Urban Area of the Region.

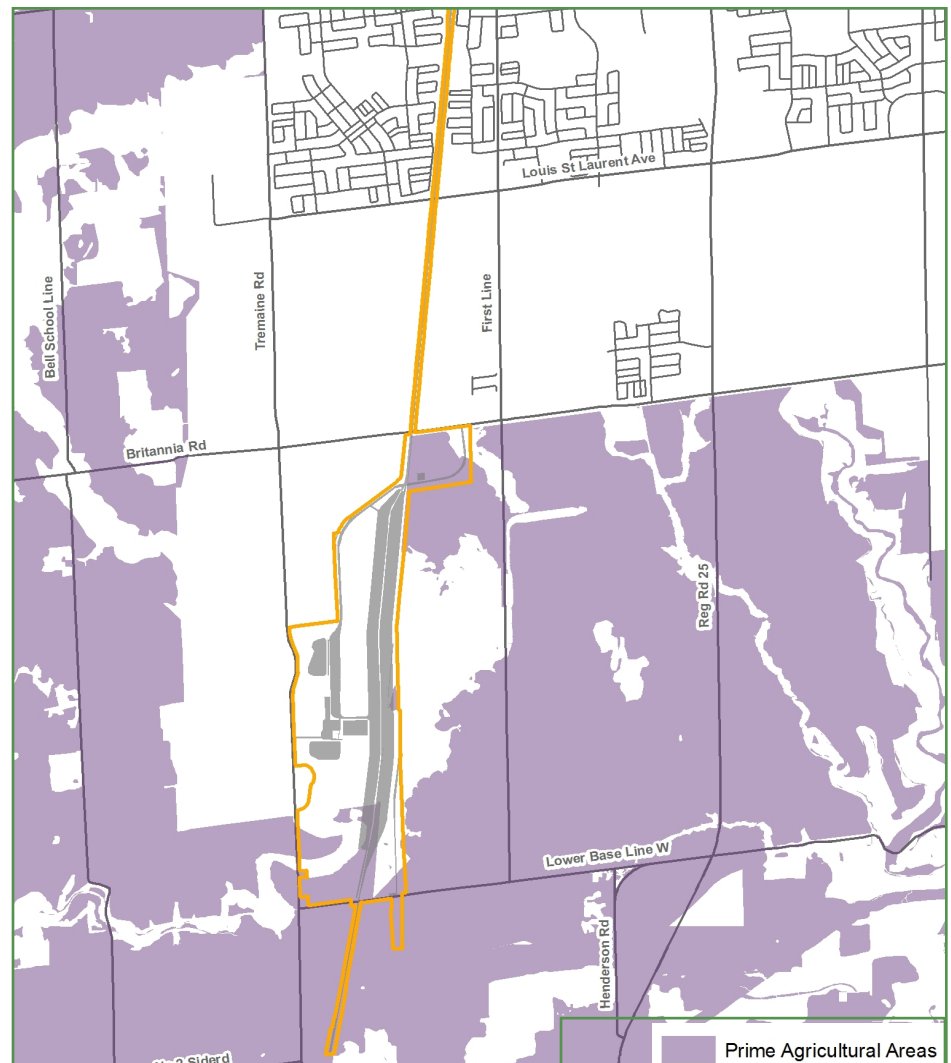


Figure 9: Prime Agricultural Area (see Appendix A, Figure 27)

D.6.1 ROP Agricultural VCs and Standards

Table D.6 (a) summarizes the agricultural VCs from the ROP that could be affected by the Project; (b) sets out the corresponding ROP effects-based standards of general application for the agricultural system and activities in the area of the Project; and (c) lists the VCs identified in the EIS Guidelines (summarized in Tables B.3.A and B.3.B) addressed by each ROP standard.

Appendix A and B provide additional visual details and support for all ROP standards.

Ontario has broad authority over and interest in agriculture and agricultural standards. The ROP implements these provincial standards of protection of prime agricultural areas and agricultural activities.

Table D.6
Regional Official Plan Standards for SAEEs on Preliminary VCs—Agriculture

VCs from the ROP	Regional Official Plan Standard	Test for Significant Adverse Environmental Effect	VCs from the EIS Guidelines
Agriculture	To recognize and protect lands within the agricultural system and direct non-farm uses to the urban area unless specifically permitted by this plan (ROP Reference 101(1.6))	New, non-farm physical activity on lands within the agricultural system	G.3 Rural settings
Agricultural Lands	To recognize, encourage and protect agriculture as the primary long-term activity and land use throughout the agricultural system, and preserve the agricultural land base by protecting prime agricultural lands (ROP Reference 101(2))	New, non-agricultural physical activity within the agricultural systems	G.3 Rural settings

D.7 Residential

Residential lands and the residents who live on them are relevant to this Project because the nearby neighbourhood includes existing and planned residential communities north of Britannia Road.

CEAA does not refer to residential lands as a component of the “environment”; however, effects on Aboriginal residents or their health constitute “environmental effects” under s.5(1)(c). Equally, changes to land used by non-Aboriginal residents may fall under s.5(2), where such changes are directly related or necessarily incidental to a federal approval required for the Project. For effects on non-Aboriginal health or residents to be considered under s.5(2), there must be a federal approval that assesses changes to the environment and these environmental changes must cause these effects on non-Aboriginal residents or their health. For this Project, the required federal approvals do not expressly address the pathways that give rise to broad review of environmental effects on human health or socio-economic conditions; however, the s.98 CTA approval requires consideration of the “interests of the localities” that will be affected by the new railway lines. Therefore, these topics become relevant to CEAA through the Region or Town. Additionally, through the EIS Guidelines finalized on July 20, 2015, this EA must consider three topics relevant to residents in the area of the Project: (1) municipal land use, including present and approved land uses; (2) human safety in relation to vehicle, bicycle and pedestrian transportation; and (3) human health in relation to

air quality and noise exposure. Consistent with this CEAA framework, six VCs relate to this topic, including “Human Health Conditions,” “Residential Land Use: Current & Future Approved,” and “Urban Settings.” Ontario has broad jurisdiction over and regulatory authority to address all local matters such as residential lands and their growth and protection from incompatible uses. Since the 2005 PPS, Ontario has expressly engaged in “building strong communities.” As support for “strong, liveable and healthy communities,” this PPS introduced the requirement that urban

municipalities set minimum targets for residential densities and intensification. Increased residential density is tied to improving alternative transportation modes, particularly public transit, as higher order transit depends on high urban densities on neighbouring lands.²⁸ To address incompatible land uses, this PPS demands that “long-term economic prosperity” be supported by planning so that major facilities and sensitive land uses are “appropriately designed, buffered and separated from each other to prevent adverse effects” from noise and other contaminants.

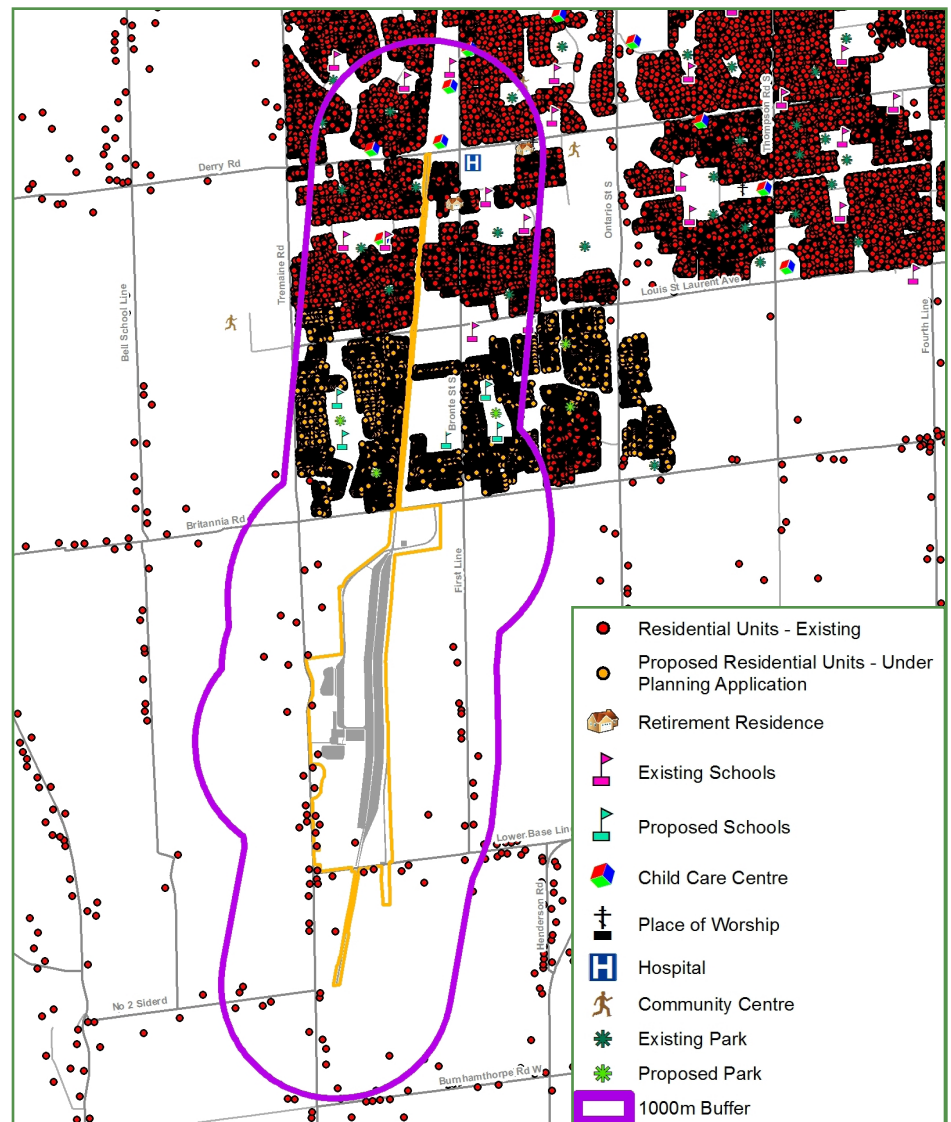


Figure 10: Sensitive Land Uses: Residential and Institutional (see Appendix A, Figure 33)

**Table D.7
Regional and Town Official Plan Standards for SAEs on Preliminary VCs—
Residential Lands**

VCs from the ROP/ Milton OP	Regional or Town Official Plan Standard	Test for Significant Adverse Environmental Effect	VCs from the EIS Guideliens
Healthy Communities	To require development in designated greenfield areas to contribute to creating healthy communities (ROP Reference 77(2.4))	New physical activity that does not contribute to creating a healthy community	C. Air VCs G.1 Human health conditions G.2 Human safety conditions G.5 Residential land use: current and future approved
Noise on Residential Sensitive Land Uses	To ensure that high noise generating activities are located away from residential development or are appropriately buffered (Milton OP Reference 2.5.3.6)	New physical activity generating noise that is not located away or appropriately buffered from residential development	C.2 Ambient noise levels on residences G.1 Human health conditions G.5 Residential land use: current and future approved G.6 Urban ICI land use: current and future approved
Night-Time Light on Residential Sensitive Land Uses	To ensure that high light generating activities are located away from residential development or are appropriately buffered (Milton OP Reference 2.5.3.6)	New physical activity generating night-time light that is not located away or appropriately buffered from residential development	C.3 Ambient night-time light levels G.1 Human health conditions G.5 Residential land use: current and future approved G.6 Urban ICI land use: current and future approved

To further advance efficient land use and development, the 2006 Growth Plan promotes “complete communities” to meet people’s needs for daily living including access to an appropriate range of jobs, services and housing. The Growth Plan also provides specific residential density targets for urban areas.

The ROP addresses these provincial standards, including standards for “healthy communities” and residential land use density targets for recently-approved residential lands across the street from the Project. Importantly, the ROP also relies on other Ontario jurisdictions to regulate emissions from proposed development on residential lands. In particular, the official plan of the Town of Milton provides noise and night-time light emissions standards. Existing provincial laws also regulate air quality. Lastly, there is jurisdiction for future municipal by-laws on this topic.²⁹

D.7.1 ROP Residential Land Use VCs and Standards

Table D.7 (a) summarizes the residential land use VCs from the ROP and Milton official plan that could be affected by the Project; (b) sets out the corresponding ROP effects-based standards of general application for residential lands, and the relevant Milton official plan standards, in the area of the Project; and (c) lists the VCs identified in the EIS Guidelines (summarized in Tables B.3.A and B.3.B) addressed by each ROP and Milton official plan standard..

Appendix A and B provide additional visual details and support for all ROP standards.

D.8 Employment

Employment and employment lands are relevant to the Project because the majority of the physical activities proposed for the Project take place on lands that are designated in the Regional Official Plan for employment use and are subject to minimum employment density targets.

CEAA does not refer to employment or employment lands as a component of the environment, but effects on Aboriginal employment could be “environmental effects” under s.5(1)(c). Equally, changes to land used for non-Aboriginal employment could be included through s.5(2), where changes to such lands are directly related or necessarily incidental to a federal approval required by a project. For non-Aboriginal employment to be considered under s.5(2), there must be a federal approval that requires changes to the environment and these environmental changes have effects on non-Aboriginal employment. For this Project, the required federal approvals do not expressly address the pathways that give rise to broad review of environmental effects on socio-economic conditions such as employment; however, the s.98 CTA approval requires consideration of the “interests of the localities” that will be affected by the new railway lines. Therefore, these topics become relevant to CEAA through the Region or Town. Additionally, the EIS Guidelines issued for this Project require that the EA consider municipal land use, including present and approved land uses. Under this CEAA framework, the key VC is “Urban ICI (industrial, commercial & institutional) land use: current & future approved.” This topic is meant to address effects on non-residential urban land uses.³⁰ This topic also includes VCs for the “Urban Settings” and two VCs related to cultural heritage.

Ontario’s interest and jurisdiction over jobs and local employment is broad. The Province has placed greater importance on the connection between employment and land use through the 2005 PPS references to “healthy communities.” The Province reinforced this connection through the 2006 Growth Plan. The Growth Plan sought “complete communities,” introduced

land use intensity targets for both residential and employment uses, and sought to ensure that public sector investment in infrastructure would be maximized inside urban areas before allowing service-intensive urban uses to expand into unserved rural lands. The Province also advanced the employment land use connection through 2006 amendments to the



Figure 11: Employment Areas: Project Detail (see Appendix A, Figure 39)

**Table D.8
Regional Official Plan Standards for SAEs on Preliminary VCs—
Employment Lands**

VCs from the ROP	Regional Official Plan Standard	Test for Significant Adverse Environmental Effect	VCs from the EIS Guidelines
Designated Greenfield Areas	To require development in designated greenfield areas to contribute towards achieving the development density target of Table 2 and the regional phasing of Table 2A, and provide a diverse mix of land uses to support vibrant neighbourhoods ³² (ROP Reference 77(2.4))	Physical activity in designated greenfield area that does not contribute to achievement of development density target or a diverse mix of land uses	G.4 Urban settings G.6 Urban ICI land use: current and future approved
Employment Use and Density	To plan for, protect and preserve the employment areas for current and future use (ROP Reference 77.4(2))	Physical activity in employment area that is not principally a manufacturing, warehousing or office use	G.4 Urban settings G.6 Urban ICI land use: current and future approved
Urban Services for Employment Areas	The urban area consists of areas designated on Map 1 where urban services are or will be made available ³³ (ROP Reference 74)	Physical activity in urban area that is not planned to be on urban services	G.4 Urban settings G.6 Urban ICI land use: current and future approved
Urban Employment Lands & Transportation Facilities	Designate land in the vicinity of existing or planned major highway interchanges, ports, rail yards, and airports for employment purposes, once these lands are included in the urban area (ROP Reference 77.4(6))	Designation of land for employment related to transportation facility where facility is not approved and/or the land is outside the urban area.	G.4 Urban settings G.6 Urban ICI land use: current and future approved
Municipal Finances	To prepare a joint infrastructure staging plan and development phasing strategies to ensure that infrastructure (and human services) is planned and financed in advance of need (ROP Reference 77(12))	Physical activity that requires unfinanced infrastructure and human services	G.4 Urban settings G.6 Urban ICI land use: current and future approved
Cultural Heritage Resources	Prior to development occurring in or near areas of archaeological potential, require assessment and mitigation in accordance with provincial requirements and the Regional archaeological management plan (ROP Reference 167(6))	Physical activity in or near areas of archaeological potential without assessment and mitigation that accords with provincial requirements or the Region's archaeological management plan	I. Cultural Heritage VCs

Planning Act, which added a new definition of “area of employment” to meet provincial objectives to protect designated employment lands from private applications to convert such lands to non-employment uses.

The ROP advances each of these three provincial priorities for employment and employment lands. First, the ROP addresses the PPS “healthy communities” objective by promoting live-work communities and balanced growth in residents and jobs. Second, the ROP meets provincial Growth Plan standards for employment growth and intensification across the Region by providing its own standards for employment allocations within each local municipality such as the Town of Milton. The ROP also addresses Growth Plan fiscal standards by providing infrastructure phasing and financing standards. Third, the ROP meets the *Planning Act* guidance on “areas of employment” by prohibiting residential and other non-employment uses in its designated employment areas subject to very limited exceptions.³¹

Additionally, consistent with PPS standards for cultural heritage, the ROP addresses cultural heritage resources with a focus on archaeological resources.

D.8.1 Employment Land Use Standards

Table D.8 (a) summarizes the employment land use VCs from the ROP that could be affected by the Project; (b) sets out the corresponding ROP effects-based standards of general application for employment lands at the Project site and in the area of the Project; and (c) lists the VCs identified in the EIS Guidelines (summarized in Tables B.3.A and B.3.B) addressed by each ROP standard.

Appendix A and B provide additional visual details and support for all ROP standards.

Next Steps

CEAA provides a detailed multi-step environmental assessment planning process. It focuses on assessing projects for their likelihood to cause significant adverse environmental effects (SAEEs). CEA Agency guidance recommends regard to standards to identify whether a predicted adverse effect is significant.

This Brief identifies existing land use standards applicable to the lands proposed for or affected by the CN Project. Virtually all of these standards implement provincial standards.

Key future steps in the federal CEAA panel review include: (i) identifying measures to avoid or reduce potential SAEs, (ii) assessing the likelihood of such effects taking place if this Project proceeds, and (iii) reviewing the extent to which federal regulators may implement the measures required to avoid or mitigate identified SAEs.

The CEAA panel review process engages broad stakeholder, public, and expert scrutiny for all of these steps.

The Halton Municipalities look forward to participating in all aspects of this panel review process.

Endnotes

1. The Halton Municipalities consist of Halton Region, the Town of Milton, the City of Burlington, the Town of Halton Hills, and the Town of Oakville.
2. This Brief was prepared with the assistance of legal counsel. It is intended to be consistent with all existing letters and submissions from the Halton Municipalities and their legal counsel. However, in the event of inconsistency, this Brief prevails.
3. As per the CEA Agency's document, "Technical Guidance for Assessing Cumulative Environmental Effects under the Canadian Environmental Assessment Act, 2012" (<https://www.ceaa-acee.gc.ca/default.asp?lang=En&n=B82352FF-1&offset=4&toc=hide>)
4. On the other hand, the majority of CN lands in the area of the Project are rural lands not available for urban development until after the year 2031.
5. Guidance issued in draft by the CEA Agency in December 2014 for public comment describes scenario building at p. 25: see Technical Guidance for Assessing Cumulative Effects under the *Canadian Environmental Assessment Act, 2012*, p. 25.
6. SOR/2012-147, s.25(b).
7. CEAA imposes a 2-year limit on this EA process, beginning with the referral decision, but excepting any time during this period where the panel awaits information from the proponent.
8. CEAA, subsections 4(1) and (2).
9. Guidance issued in draft by the CEA Agency in December 2014 for public comment describes this three-part framework as a "model" where the designated Project is the "source," the effects are upon a "receptor," and any route by which the source affects a receptor is a "pathway": See Appendix 1 to Technical Guidance for Assessing Cumulative Effects under the *Canadian Environmental Assessment Act, 2012*, p.46. Also see "Appendix 1: Source-pathway-receptor model" provides under the heading, "How the source may reach the receptor (pathway)" that "The pathway is the route the source takes to reach a VC. Pathways are the mechanisms through which a change in the environment occurs. Pathways can include physical or chemical transport through air, water, soil, animals, food supply, etc."
10. Relevant changes to the "environment" that may also result in change to a listed component in s.5(1)(a).
11. The reference to "aquatic endangered species" and not "endangered species" generally, reflects the limited jurisdiction of the federal *Species at Risk Act* on terrestrial species at risk (SAR). This federal legislation has broad application to aquatic SAR and migratory bird SAR only. Further, as concerns SAR habitat, federal law has broad application to fish habitat, but for terrestrial habitat limits its application to "federal lands," not all lands.
12. Approval is required if certain circumstances apply; e.g., depending on the regime, a person objects or there is no CN-landowner agreement.
13. See para 19(1)(j) for this Ministerial power.
14. Definition provided in the March 2015 CEA Agency "Practitioners Glossary." Multiple CEA Agency guidance documents reference valued components or VCs.
15. See *CN Commercialization Act*, SC 1995, c24. As a result of this Act, CN lands ceased to be Crown lands and, thus, no longer fall under federal jurisdiction under s.91 1A. of the Constitution.
16. See, in particular, the Supreme Court of Canada's 2001 decision in 114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town), [2001] 2 SCR 241.
17. See (1) Canada-wide Accord on Environmental Harmonization and the Sub-agreement on environmental assessment, (2) Canada-Ontario Agreement on Environmental Assessment Cooperation (2004), and (3) Federal/Provincial Environmental Assessment Coordination in Ontario (June 2007). The Sub-agreement on EA provides that "5.6.1 The federal government will be the lead Party for proposed Projects on federal land..." and that "5.6.2 The provincial government will be the lead Party for proposed Projects on lands within its provincial boundary not covered under 5.6.1..."
18. See the provincially-approved Municipal Class Environmental Assessment governing projects by the public and private sector involving municipal roads, water, transit, stormwater and wastewater facilities. A news release on the Canada-Ontario Agreement provides: "Projects that are subject to both federal and provincial environmental assessment legislation include

Endnotes (cont'd)

municipal and provincial Projects that require federal environmental approvals, permits, licences, or involve federal funding, such as infrastructure Projects.”

19. In Ontario, municipalities must ensure their decision making addresses the topic of endangered species because of the 2014 Provincial Policy Statement. Additionally, Ontario regulates endangered species and their habitat under the *Endangered Species Act, 2007* (ESA). The ESA prohibits damage or destruction to species’ habitat, but allows regulations to provide limited exemptions and the Minister to issue approvals that affect habitat. Federal regulation of endangered species, set out in the *Species at Risk Act, 2001*, applies to aquatic endangered species, but does not apply to any lands associated with the CN Project as they are not federal lands.
20. In Ontario, municipalities must ensure their decision making addresses the topic of heritage and archaeological resources because of the 2014 Provincial Policy Statement. Additionally, Ontario regulates these resources under the *Ontario Heritage Act*. Federal regulation of cultural heritage and archaeological matters does not apply to any lands associated with the CN Project as they are not federal lands and do not contain federally-designated features.
21. Courts have phrased this exemption multiple ways: (1) impair, paralyze or sterilize the undertaking, (2) affect a vital part of the management and operation of an undertaking, (3) affect the basic, minimum and unassailable content to federal authority, and (4) essential to fulfilling the statutory mandate of the undertaking. On the other hand, commentators have suggested limiting this test to provincial or municipal laws that “threaten the continuing functioning of the undertakings.”
22. This reference to the Guidelines Order is a reference to the federal environmental assessment regime that was in place at that time of the court judgment. Its formal name was the Environmental Assessment and Review Process Guidelines Order, SOR/84-467.
23. Note that, during the development and approval of ROPA 38, the operative Provincial Policy Statement was the 2005 PPS; however, as of early in 2014, there is a new Provincial Policy Statement, PPS 2014. Their natural heritage policies are similar.
24. Key Features that have been identified are shown on Map 1G, reproduced in Appendix A, Figure 15.
25. Transportation is the first of three topics dealing with the VC for “Urban Settings”: the others are “Residents” and “Employment.”
26. The potential for adverse effects due to air and noise emissions is addressed under topic 5, “Residents”, below.
27. This and other amendments were made in 2013 to the Navigable Waters Protection Act (now called the *Navigation Protection Act*).
28. See (1) Transit-Supportive Land Use Planning Guidelines (Ontario Ministry of Transportation and Ministry of Municipal Affairs, April 1992) section 2.2 (p.18), and (2) Transit-Supportive Guidelines Ontario Ministry of Transportation, 2012) section 1.1.7 (p.24) for tables illustrating the relationship between increased residential densities and higher transit service.
29. See, for example, Health Protection Air Quality By-law 2010-035 passed by the neighbouring Town of Oakville, within Halton Region.
30. This grouping of activities and the ICI acronym are well established. See, for example, the reference in the Growth Plan policy 2.2.6.2 a) to a “mix of employment uses including industrial, commercial and institutional uses...”; also see O.Reg.103/94, “Industrial, Commercial and Institutional Source Separation Programs” under Ontario’s *Environmental Protection Act*.
31. See ROP s.77.4(1).
32. Table 2 and Table 2A from the ROP may be found in Part F of Appendix B to this Brief.
33. The urban area set out in Map 1 from the ROP is illustrated in Figure 27 in Appendix A to this Brief.



Questions or comments?

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