

#	Condition	Comments/Rationale	Suggested Revisions
1 1.7	<p>Definitions</p> <p><i>Daytime</i> means from one hour before sunrise to one hour after sunset, as calculated by the National Research Council of Canada for Hamilton (Ontario).</p>	<ul style="list-style-type: none"> • CN notes that the only reference to daytime in the conditions as drafted pertains to noise (see Condition 4.8); in this regard, the Canadian Transportation Agency (CTA) guidance on noise (<i>Railway Noise Measurement and Reporting Methodology</i>, available on-line at https://otc-cta.gc.ca/eng/railway_noise_measurement) refers to daytime hours as those between 7 am and 10 pm and nighttime hours as those between 10 pm and 7 am. • Using these hours to define daytime in this condition would allow consistency in the noise measurement and reporting conducted by CN, which must follow the CTA guidelines. • CN also notes that the definition of daytime as drafted would result in a variable length of daytime during which activity may be undertaken throughout the year. While this may pose no constraint in summer months, the shortness of daytime by this definition during the winter could constrain on-site activity, as sunrise occurs at almost 8 am and sunset before 5 pm in Hamilton in December. • Using a fixed definition of daytime instead of one that varies throughout the year will facilitate compliance. 	<p>CN therefore suggests the following revision:</p> <p><i>“Daytime means from 7:00 am to 10:00 pm one hour before sunrise to one hour after sunset, as calculated by the National Research Council of Canada for Hamilton (Ontario).”</i></p>
1.8	<p><i>Designated Project</i> means the Milton Logistic Hub Project as described in section 3.3 of the Joint Review Panel Report (Canadian Impact Assessment Registry Reference Number 80100, Document Number 985).</p>	<ul style="list-style-type: none"> • The description of the Project in Section 3.3 of the Joint Review Panel Report is not accurate or complete, and reliance on this description for the purpose of defining the Designated Project in the Decision Statement would inadvertently exclude project components and activities described and assessed during the EA and also inadvertently include components that are beyond the care 	<p>CN suggests the definition of “Designated Project” be revised as follows:</p> <p><i>Designated Project</i> means the Milton Logistic Hub Project as described in section 3.3 and 3.4 of the <i>Milton Logistics Hub Environmental Impact Statement</i> (Canadian Impact Assessment Registry</p>



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		<p>and control of CN.</p> <ul style="list-style-type: none"> • The description of the Project in Section 3.3 of the Joint Review Panel Report also contains errors in the description of certain project components that were assessed during the EA. • A detailed description of these inaccuracies is provided in Annex 2. • For these reasons, CN suggests revisions to Condition 1.8, as shown in the next column, to ensure the definition of the Designated Project for the purpose of the Decision Statement is based on an accurate description of the Project as described and assessed during the EA. • The suggested revised definition draws on the Designated Project definition established by the Agency in the EIS Guidelines and by the Minister when establishing the Joint Review Panel, and relies on the Project description as documented in the EIS, which is the most complete description of the Project, but also encompasses the refinements described and fully assessed during the EA process. • CN also notes that draft Conditions 8.10 and 8.32 contemplate further design of culverts and ecopassages to retain habitat connectivity. CN therefore suggests this Designated Project definition condition be drafted in a manner that provides flexibility to potentially implement alternative culvert and ecopassage designs from those originally assessed in the EA. • For example, during the EA, interest was expressed by stakeholders, notably Conservation Halton, regarding alternative design of the proposed culverts on Tributary A under the terminal. CN originally proposed two twin box 	<p>Reference Number 80100, Document Number 57), and shall include any refinements arising from the:</p> <ul style="list-style-type: none"> • <i>revised conceptual design of the Lower Base Line Grade Separation, as described in response to IR3.45 (Canadian Impact Assessment Registry Reference Number 80100, Document Number 613);</i> • <i>additional Oil and Grit Separators to treat run-off from the work pad areas, as described in the Updated Consolidated Table of Mitigation Measures and Proponent Commitments (Canadian Impact Assessment Registry Reference Number 80100, Document Number 799);</i> • <i>culverts and ecopassages to be designed in accordance with conditions 8.10 and 8.32; and</i> • <i>implementation of conditions 5.1, 5.2, 6.1, 6.2, 7.3, and 8.3.</i>



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		<p>culverts beneath the yard tracks and work pad area (EIS, Section 3.3.11, p.50). During the hearing, CN indicated it would continue to engage with Fisheries and Oceans Canada during detailed design to further refine culvert design to accommodate flows and maintain aquatic habitat connectivity. CN therefore continues to explore the feasibility of alternative culvert designs, including a larger, single cell culvert design, that would address the concerns raised by Conservation Halton, and expects a revised culvert design may be realized through the implementation of Condition 8.32, as well as through the <i>Fisheries Act</i> authorization process.</p> <ul style="list-style-type: none"> • CN also notes that certain draft conditions would require further design in consultation with various parties; this condition should facilitate the incorporation of those refinements. 	
1.24	<p><i>Offsetting plan</i> means “offsetting plan” as described in Schedule 1 of the <i>Authorizations Concerning Fish and Fish Habitat Protection Regulations</i>.</p>	<ul style="list-style-type: none"> • The Fish and Fish Habitat Protection Program of Fisheries and Oceans Canada (DFO) has confirmed to CN (correspondence dated March 2, 2020) that CN’s application for an authorization under the <i>Fisheries Act</i> will continue to be processed under the <i>Applications for Authorization under Paragraph 35(2)(b) of the Fisheries Act Regulations</i> and not under the new regulations pursuant to the amended <i>Fisheries Act</i>. • However, the draft definition of “offsetting plan” in Condition 1.24 makes reference to the regulations applicable under the amended <i>Fisheries Act</i>. 	<p>To address this issue, CN suggests the following alternative wording:</p> <p><i>Offsetting plan</i> means “offsetting plan” as described in Schedule 1 of the <i>Applications for Authorization under Paragraph 35(2)(b) of the Fisheries Act Regulations</i>.</p>
1.27	<p><i>Progressive reclamation</i> means reclamation which is carried out by the Proponent concurrently with all phases of the Designated Project to progressively</p>	<ul style="list-style-type: none"> • CN notes that most “physically disturbed areas” are intended for other end uses associated with the Project itself, including Project infrastructure, 	<p>To address these issues, CN suggests the following alternative wording:</p>

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	<p>return any physically disturbed areas to a state as close to the baseline as possible, as soon after the disturbance as practical.</p>	<p>new or enhanced habitat, and mitigation measures (such as noise berms and barriers, for example), all of which were assessed in the EA.</p> <ul style="list-style-type: none"> • CN observes that all such areas intended for other Project end uses cannot be returned to the baseline or to a state close to the baseline. • CN also notes, for physically disturbed areas not intended for Project end uses, there may be cases where returning to the baseline or to a state close to the baseline may not be desirable. For example, the baseline in some areas may include non-native or invasive species. • See our related comments on Condition 6.9. 	<p>“<i>Progressive reclamation</i> means reclamation which is carried out by the Proponent concurrently with all phases of the Designated Project to progressively return any physically disturbed areas <i>not intended for a planned Project end use</i> to a state as close to the baseline as possible, <i>except where the baseline is already compromised by non-native or invasive species</i>, as soon after the disturbance as practical.”</p>
<p>1.33</p>	<p><i>Reporting year</i> means July 1 of a calendar year through June 30 of the subsequent calendar year.</p>	<ul style="list-style-type: none"> • CN notes that most construction activities will be scheduled during the spring, summer, and fall months, as will most follow-up and monitoring programs, especially those related to vegetation, wildlife, and fish. • CN observes that a mid-year reporting cycle will result in seasonal follow-up and monitoring results being split across consecutive annual reports (<i>i.e.</i>, spring and early summer results would be reported in one year, while late summer and fall results would be reported in the subsequent year). • CN also notes that all of its network-wide environmental monitoring and reporting, particularly of GHG and other emissions, is done on a calendar-year basis; a mid-year reporting requirement for the Project will make it difficult to extract and report on the relevant monitoring data for the segmented reporting period. • In both of these cases, mid-year reporting would be more onerous and unnecessarily complicated, while potentially making it more difficult to identify 	<p>To accommodate these constraints, CN suggests the following alternative wording:</p> <p>“<i>Reporting year</i> means <i>January</i> 1 of a calendar year through <i>December 31</i> of the <i>same</i> calendar year.”</p>

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		<p>inter- and intra-annual seasonal trends (particularly for vegetation, wildlife, and fish components).</p> <ul style="list-style-type: none"> • Further, mid-year reporting would overlap with the busiest times for monitoring, data collection, and adaptive management (if required). 	
2	General Conditions		
2.5	The Proponent shall, where consultation is a requirement of a condition set out in this document:		
2.5.2	provide all information available and relevant to the scope and the subject matter of the consultation and a period of time agreed upon with the party or parties being consulted, not to be less than 15 days, to prepare their views and information;	<ul style="list-style-type: none"> • CN agrees with the standard of a minimum of 15 days for third parties to prepare their views and information. • Based on CN’s experience since 2014 and throughout the EA process, it may not be possible to reach agreement with third parties regarding the period of time for consultation. 	<p>To accommodate both the concept of a minimum standard for duration and the spirit of reaching agreement with third parties, CN suggests the following alternative wording:</p> <p>“provide all information available and relevant to the scope and the subject matter of the consultation and a period of time <i>not less than 15 days or as otherwise agreed upon with the party or parties being consulted</i>, to prepare their views and information;”</p>
2.7	The Proponent shall, where a follow-up program is a requirement of a condition set out in this document, determine, as part of the development of each follow-up program and in consultation with the party or parties being consulted during the development, the following information:		
2.7.3	the frequency at which the follow-up program must be updated;	<ul style="list-style-type: none"> • The purpose of a follow-up program is to verify the accuracy of the environmental assessment of a designated project and to determine the effectiveness of any mitigation measures. • Once a follow-up program verifies the accuracy of the environmental assessment and confirms that mitigation measures are effective, further follow-up is no longer required. In such cases, a follow-up program also need not be updated. 	<p>CN therefore suggests the following revision:</p> <p>“the frequency at which the follow-up program must be <i>reviewed to determine whether it should be updated and continued or is no longer warranted and can be discontinued</i>;”</p>

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		<ul style="list-style-type: none"> A general provision is warranted to provide for an evaluation of each follow-up program to determine whether the program is still needed and, if so, whether it should be updated. CN suggests revisions to this Condition 2.7.3 to ensure this review is conducted for each follow-up program. [CN notes that an alternative to this suggested revision is to include reference to such a review in every condition requiring a follow-up program; Condition 9.3 as drafted includes appropriate language in this regard, <i>i.e.</i>, “The Proponent shall determine, based on the results of the follow-up program, if additional monitoring is required after the first two years...”] Further, while the duration of some follow-up programs is clearly specified in the conditions below, other conditions do not specify a duration, instead requiring the follow-up program to be implemented during “all phases of the Designated Project” (Conditions 4.10, 6.10, 8.4, 8.11), “throughout operation” (Conditions 8.26, 8.33), or “following the end of construction” (Conditions 5.10, 5.13, 6.3), with no end point. Absent a mechanism to review whether the follow-up program is still needed, these conditions would require implementation of the follow-up program (and all of its related reporting requirements) in perpetuity regardless of whether the follow-up program has fulfilled its purpose. CN therefore also suggests revisions to the follow-up program conditions below to reflect and be consistent with our suggested revision to this Condition 2.7.3. 	
2.8	The Proponent shall update the information determined for each follow-up program pursuant to	<ul style="list-style-type: none"> Per our related comments on Condition 2.7.3, the need to update a follow-up program should be 	<i>“For any follow-up program to be continued beyond the initial duration specified by any other condition</i>

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	condition 2.7 during the implementation of each follow-up program, at the minimum frequency determined pursuant to condition 2.7.3 and in consultation with the party or parties being consulted during the development of each follow-up program.	linked to the need for that follow-up program to continue, which determination should be made pursuant to Condition 2.7.3.	<i>set out in this document</i> , the Proponent shall update the information determined for each follow-up program pursuant to condition 2.7 during the implementation of each follow-up program, at the minimum frequency determined pursuant to condition 2.7.3 and in consultation with the party or parties being consulted during the development of each follow-up program.”
2.10	The Proponent shall, where a follow-up program is a requirement of a condition set out in this document:		
2.10.4	if modified or additional mitigation measures are required pursuant to condition 2.10.3, develop and implement these mitigation measure(s) in a timely manner and monitor them pursuant to condition 2.10.2.	<ul style="list-style-type: none"> See our related comments on Conditions 4.5.2, 4.10.4, 4.20.6, 5.10.4, 5.13.2, 6.3.3, 7.12.5, 8.11.4, 8.22.3, 8.26.4, 8.29.3, 9.1.2, and 11.3.3. 	
2.13	The Proponent shall submit to the Agency the annual report referred to in condition 2.12, including a plain language executive summary in both official languages, no later than October 31 following the reporting year to which the annual report applies.	<ul style="list-style-type: none"> See our related comments on Condition 1.33. 	In light of the suggested revision to Condition 1.33, CN suggests the following alternative wording: “The Proponent shall submit to the Agency the annual report referred to in condition 2.12, including a plain language executive summary in both official languages, no later than <i>March</i> 31 following the reporting year to which the annual report applies.”
2.14	The Proponent shall publish on the Internet, or any medium which is publicly available, the annual reports and the executive summaries referred to in conditions 2.12 and 2.13, the air pollutant emissions reduction plans referred to in conditions 4.16 and 4.17, the final offsetting plan(s) referred to in condition 7.6, the wildlife management and connectivity plan referred to in condition 8.34, the cultural heritage property maintenance and re-use plan referred to in condition 11.5, the archaeological resources protection plan referred to in condition 11.8, the accident and malfunction response plan	<ul style="list-style-type: none"> CN notes that this condition would require the public disclosure of the follow-up program results required pursuant to condition 2.12.5. CN notes that some follow-up program results – such as data regarding the location of species at risk or historical or archaeological resources or items of heritage value – may be sensitive and should not be shared publicly or with third parties other than regulatory authorities. See our related comments on Condition 3.2.1.4.1. 	To protect sensitive species and resources, CN suggests the following language be added to this condition or as an additional sub-condition: “ <i>The Proponent shall exclude from the reports published pursuant to condition 2.14 any follow-up program results that cannot or should not be publicly disclosed in order to protect a sensitive species or resource and any facility-specific emergency response plans that cannot or should not be publicly disclosed for safety and security reasons.</i> ”

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	referred to in condition 14.3, the reports related to accidents and malfunctions referred to in conditions 14.5.3 and 14.5.4, the accident and malfunction communication plan referred to in condition 14.5, the schedules referred to in conditions 15.1 and 15.2, and any update or revision to the above documents, upon submission of these documents to the parties referenced in the respective conditions. The Proponent shall keep these documents publicly available for 15 years following their publication. The Proponent shall notify the Agency, potentially affected parties, the Mississaugas of the Credit First Nation, the Six Nations of the Grand River and the Huron-Wendat Nation of the availability of these documents within 48 hours of their publication.	<ul style="list-style-type: none"> Per our comments on Condition 14.4, CN also notes that facility-specific emergency response plans are confidential for safety and security reasons. Some information contained within facility-specific plans, such as the location and quantities of 'dangerous goods' or the location of emergency evacuation routes, are sensitive and should not be made public. 	
2.17	The Proponent shall consult with the Mississaugas of the Credit First Nation, the Six Nations of the Grand River, the Huron-Wendat Nation, potentially affected parties, Conservation Halton and relevant authorities prior to notifying the Agency, pursuant to condition 2.18, of any potential change to the Designated Project.	<ul style="list-style-type: none"> CN notes that some potential changes to the Designated Project may not affect any of the technical topics in respect of which Conservation Halton has specialist or expert information or knowledge. CN notes that in recent engagement, Conservation Halton indicated to CN that it is experiencing high demand on limited staff to review documents. It is anticipated that appropriate consultation with Conservation Halton would be assured by reference in this condition to "relevant authorities," while minimizing the burden on Conservation Halton to review documentation outside of their expertise. 	<p>To avoid placing an unnecessary burden of consultation on Conservation Halton, in particular because Conservation Halton has indicated their limited resources to complete such reviews, CN suggests the following revision to ensure Conservation Halton is only requested to comment on documentation relevant to their expertise:</p> <p>"The Proponent shall consult with the Mississaugas of the Credit First Nation, the Six Nations of the Grand River, the Huron-Wendat Nation, potentially affected parties, <i>Conservation Halton</i> and relevant authorities prior to notifying the Agency, pursuant to condition 2.18, of any potential change to the Designated Project."</p> <p>A similar revision is suggested to Condition 2.18 for consistency.</p>
2.18	The Proponent shall notify the Agency in writing of any potential change to the Designated Project that	<ul style="list-style-type: none"> CN understands that the intent of this condition is to ensure that potential changes to the 	To ensure this condition does not unnecessarily and inadvertently preclude legitimate changes to the

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	<p>would result in a change to the Designated Project description included in this document or that may result in adverse environmental effects. In notifying the Agency, the Proponent shall provide a description of the change(s) to the Designated Project, the predicted adverse environmental effects and the proposed mitigation measures and follow-up requirements to be implemented by the Proponent to ensure that the change(s) do not result in adverse environmental effects greater than those predicted in the Joint Review Panel Report. The Proponent shall also describe the results of the consultation with the Mississaugas of the Credit First Nation, the Six Nations of the Grand River, the Huron-Wendat Nation, potentially affected parties, Conservation Halton and relevant authorities.</p>	<p>Designated Project do not result in new or different significant residual adverse environmental effects that were not previously considered in decision-making during the EA process and which, if known during the EA process, could have led to a materially different decision.</p> <ul style="list-style-type: none"> As the decision regarding whether a Designated Project should proceed is grounded in the likelihood of any significant adverse environmental effects and whether such effects, if any, are justified, this intention would be fulfilled if potential Project changes resulting in new or different significant residual adverse environmental effects are avoided or reduced. CN notes that a potential change in the Designated Project could result in a residual adverse environmental effect that marginally exceeds those predicted in the Joint Review Panel Report, in terms of its magnitude, extent, duration, or frequency, without being significant. CN observes that this condition, with the suggested revisions opposite, in combination with Condition 2.17, will provide a mechanism for the Agency to ensure that any potential change to the Designated Project does not result in any new or different significant residual environmental effects. 	<p>Designated Project that would not materially alter the outcome of the EA process, CN suggests the following alternative wording:</p> <p>“The Proponent shall notify the Agency in writing of any potential change to the Designated Project that would result in a change to the Designated Project description included in this document or that may result in adverse environmental effects. In notifying the Agency, the Proponent shall provide a description of the change(s) to the Designated Project, the predicted adverse environmental effects and the proposed mitigation measures and follow-up requirements to be implemented by the Proponent to ensure that the change(s) do not result in <i>significant</i> adverse environmental effects <i>other</i> than those predicted in the Joint Review Panel Report. The Proponent shall also describe the results of the consultation with the Mississaugas of the Credit First Nation, the Six Nations of the Grand River, the Huron-Wendat Nation, potentially affected parties, <i>Conservation Halton</i> and relevant authorities.”</p>
3	Community liaison communication process		
3.1	<p>The Proponent shall identify, prior to construction, parties that may be potentially affected by the Designated Project, which shall include parties representative of local and municipal governments, nearby residents, community organizations and</p>	<ul style="list-style-type: none"> CN observes that the draft wording of this condition could be interpreted to require continuous updating of the list of potentially affected parties, which may not be feasible in light of changes that may occur from day to day 	<p>To make this condition feasible, CN suggests the following revisions:</p> <p>“The Proponent shall <i>make reasonable efforts to</i> identify, prior to construction, parties that may be</p>

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	<p>business organizations identified by the Proponent in appendix D of the environmental impact statement (Canadian Impact Assessment Registry Reference Number 80100, Document Number 57) and the Mississaugas of the Credit First Nation, the Six Nations of the Grand River and the Huron-Wendat Nation. The Proponent shall provide the list of potentially affected parties, including their contact information, to the Agency prior to construction. The Proponent shall maintain this list up-to-date during all phases of the Designated Project and shall provide any updated list to the Agency as part of the annual report referred to in condition 2.12, or upon request of the Agency.</p>	<p>as people move in or out of the area, individuals change positions within employer organizations, and contact information changes.</p> <ul style="list-style-type: none"> • CN notes that it can create opportunities for interested parties to express interest in being included on the list of potentially affected parties; however, it will be incumbent on the interested party to express that interest. • CN believes the requirement to provide an updated list based on expressions of interest from interested parties annually or upon request of the Agency will be feasible and sufficient to fulfil the intention of this condition. • CN also notes that it can only identify and provide contact information for potentially affected parties who agree to be identified publicly and who provide valid contact information. 	<p>potentially affected by the Designated Project, which shall include parties representative of local and municipal governments, nearby residents, community organizations and business organizations identified by the Proponent in appendix D of the environmental impact statement (Canadian Impact Assessment Registry Reference Number 80100, Document Number 57) and the Mississaugas of the Credit First Nation, the Six Nations of the Grand River and the Huron-Wendat Nation. The Proponent shall provide the list of potentially affected parties, including their contact information <i>if available</i>, to the Agency prior to construction. The Proponent shall maintain this list up-to-date during all phases of the Designated Project and shall and provide any updated list to the Agency as part of the annual report referred to in condition 2.12, or upon request of the Agency.”</p>
3.2	<p>The Proponent shall develop, prior to construction and in consultation with potentially affected parties, a community liaison communication process. The Proponent shall implement the community liaison communication process throughout all phases of the Designated Project. The Proponent shall include, as part of the community liaison communication process, a method for potentially affected parties to provide feedback to the Proponent about any adverse environmental effect caused by any component of the Designated Project and a method for the Proponent to share information about the Designated Project with potentially affected parties, to document and respond to feedback received and to demonstrate how feedback has been addressed, including through the implementation of modified or additional mitigation measures and/or modified or</p>		

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	additional follow-up program requirements. In doing so, the Proponent shall:		
3.2.1	determine, as part of the development of the community liaison communication process:		
3.2.1.4	the information about the Designated Project that the Proponent shall share with potentially affected parties, which shall include the following information:		
3.2.1.4.1	the results of all follow-up program requirements identified in conditions 4.5, 4.10, 4.20, 5.9, 5.10, 5.13, 6.3, 6.10, 7.12, 8.4, 8.11, 8.14, 8.22, 8.26, 8.29, 8.33, 9.1 and 9.3, including any modified or additional mitigation measure implemented or proposed to be implemented by the Proponent;	<ul style="list-style-type: none"> CN notes that some follow-up program results – such as data regarding the location of species at risk or historical or archaeological resources or items of heritage value – may be sensitive and should not be shared publicly or with third parties other than regulatory authorities. 	<p>“the results of all follow-up program requirements identified in conditions 4.5, 4.10, 4.20, 5.9, 5.10, 5.13, 6.3, 6.10, 7.12, 8.4, 8.11, 8.14, 8.22, 8.26, 8.29, 8.33, 9.1 and 9.3, including any modified or additional mitigation measure implemented or proposed to be implemented by the Proponent, <i>except results that cannot or should not be disclosed in order to protect a sensitive species or resource;</i>”</p>
4	Atmospheric environment		
4.3	The Proponent shall develop, prior to construction, mitigation measures to control the direction, timing and intensity of lighting within the Designated Project Development Area to mitigate adverse environmental effects of the Designated Project (including on migratory birds), while meeting engineering requirements for safe railway and facility operation. The Proponent shall implement these measures throughout all phases of the Designated Project. The Proponent shall submit these measures to the Agency prior to implementing them. As part of these measures, the Proponent shall:		
4.3.2	use down cast light fixtures	<ul style="list-style-type: none"> CN notes that down-cast light fixtures may not be feasible during the construction phase to ensure a safe working environment. 	<p>To make this condition feasible, CN suggests the following alternative wording:</p> <p>“use down cast light fixtures <i>during operation of the Project</i>”</p>

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4.4	The Proponent shall evaluate, prior to construction, the technical and economic feasibility of installing amber-coloured outdoor light fixtures with wavelengths longer than 500 nanometers and a peak around 590 nanometres within the Designated Project Development Area. The Proponent shall also evaluate, in consultation with relevant authorities, whether the use of amber lighting can reduce sky glow and glare from the Designated Project, is not harmful to wildlife and can meet all engineering requirements for safe railway and facility operation. In doing so, the Proponent shall:	<ul style="list-style-type: none"> While a definition of what is meant by ‘amber light’ is required, CN notes that the reference to the range of wavelengths (500 to 590 nanometers (nm)) or a minimum wavelength (500 nm) was not referenced previously during the EA. Previous references to amber light during the EA referred to the colour of light in terms of the Correlated Colour Temperature (CCT) measured in degrees Kelvin (K). This is the common metric used in the lighting industry to describe the colour of light. In this regard, amber lighting (with wavelengths peaking around 590 nm) would be considered to fall in the 3000K range, while the white LED lights currently proposed for the Project would be in the 5000K range. CN suggests the required evaluation be carried out with reference to these ranges, to be consistent with and consider what has been proposed and what is typically referenced in the lighting industry. 	<p>CN therefore suggests the following revisions:</p> <p>“The Proponent shall evaluate, prior to construction, the technical and economic feasibility of installing amber-coloured outdoor light fixtures with <i>a Correlated Colour Temperature in the range of 3000 Kelvin wavelengths longer than 500 nanometers and a peak around 590 nanometres</i> within the Designated Project Development Area. The Proponent shall also evaluate, in consultation with relevant authorities, whether the use of amber lighting can reduce sky glow and glare from the Designated Project, is not harmful to wildlife and can meet all engineering requirements for safe railway and facility operation. In doing so, the Proponent shall.”</p>
4.4.2	install amber outdoor light fixtures within the Designated Project Development Area, unless the evaluation demonstrates that installing amber lighting is not technically or economically feasible or does not reduce sky glow and glare, is harmful to wildlife and/or does not meet all engineering requirements for safe railway and facility operation.	<ul style="list-style-type: none"> CN also observes that the condition as drafted could be interpreted to require light fixtures that emit <i>no</i> light at wavelengths below 500 nm (if amber light fixtures are determined to be feasible and meet the other evaluation criteria listed in the draft condition). CN notes that any light source emits a range of light wavelengths. Current light manufacturer ratings do not provide detailed information or analysis of wavelengths emitted by commercial light fixtures. Commercially available lighting technology is unlikely to achieve an absolute cut-off of wavelengths below 500 nm. CN recognizes the intent of the draft condition is to minimize wavelengths below 500 nm, if amber 	<p>“install amber outdoor light fixtures <i>with Correlated Colour Temperature in the range of 3000 Kelvin and target no more than 2% of total emitted light with a wavelength of less than 500 nanometres</i> within the Designated Project Development Area, unless the evaluation demonstrates that installing amber lighting is not technically or economically feasible or does not reduce sky glow and glare, is harmful to wildlife and/or does not meet all engineering requirements for safe railway and facility operation.”</p>

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		<p>light technology is determined to be feasible and meets the other listed criteria. CN suggests a reasonable alternative approach would be to incorporate into the condition a target spectrum with minimal emission of light with wavelengths shorter than 500 nm (e.g., less than 1-2% of total emitted light to be less than 500 nm).</p>	
4.5	<p>The Proponent shall develop, prior to construction and in consultation with the Town of Milton and other relevant authorities, a follow-up program to verify the accuracy of the environmental assessment and determine the effectiveness of mitigation measures as it pertains to adverse changes to ambient lighting attributable to the Designated Project. The Proponent shall implement the follow-up program during construction and until the end of the first year at which the Designated Project operates at its full operational capacity. As part of the implementation of the follow-up program, the Proponent shall:</p>		
4.5.2	<p>develop and implement modified or additional mitigation measures if the results of the monitoring referred to in condition 4.5.1 demonstrate that modified or additional mitigation measures are required to ensure that light trespass and glare attributable to the Designated Project meet or surpass the applicable guidelines referred to in condition 4.2.1 or 4.2.2. The Proponent shall submit these measures to the Agency prior to implementing them.</p>	<ul style="list-style-type: none"> • CN notes that Condition 2.10.4 requires CN, where a follow-up program is a requirement of a condition and the follow-up program indicates that modified or additional mitigation measures are required, to implement these mitigation measures “in a timely manner.” • CN understands the intent of timely implementation is to avoid or minimize any potential adverse environmental effect, and notes that, in some circumstances, immediate implementation may be required to fulfil this intention. • CN observes that the requirement in this condition to submit modified or additional mitigation measures to the Agency prior to 	<p>To encourage timely implementation of modified or additional mitigation while minimizing the risk of non-compliance, CN suggests the following alternative wording:</p> <p>“develop and implement modified or additional mitigation measures if the results of the monitoring referred to in condition 4.5.1 demonstrate that modified or additional mitigation measures are required to ensure that light trespass and glare attributable to the Designated Project meet or surpass the applicable guidelines referred to in condition 4.2.1 or 4.2.2. The Proponent shall submit these measures to the Agency prior to implementing them <i>or, when immediate implementation is necessary to avoid or reduce an adverse</i></p>

#	Condition	Comments/Rationale	Suggested Revisions
		<p>implementing them could result in unintended non-compliance with Condition 2.10.4.</p> <ul style="list-style-type: none"> Specifically, CN is concerned that requiring the submission of measures to the Agency prior to implementation could introduce unnecessary delay in the implementation of measures associated with adaptive management and aimed at immediately addressing adverse environmental effects. See our comments on Condition 5.13.2 for an example of when this might occur. We suggest revisions to enable immediate implementation of mitigation measures when necessary; for consistency, these revisions are proposed in relation to <i>all</i> instances of this requirement in the draft conditions (including, in addition to this condition, Conditions 4.10.4, 4.20.6, 5.10.4, 5.13.2, 6.3.3, 7.12.5, 8.11.4, 8.22.3, 8.26.4, 8.29.3, 9.1.2, and 11.3.3), though it is expected to be more important for some than others. 	<p><i>environmental effect, as soon as possible following implementation.</i>”</p>
4.6	<p>The Proponent shall manage noise throughout all phases of the Designated Project so that the Designated Project causes the acoustic environment to change by less than one to five decibels, as set out in the U.S. Federal Transit Administration’s Transit Noise and Vibration Impact Assessment Manual, and the level of highly annoyed to change by no more than 6.5% from baseline, as set out in Health Canada’s Guidance for Evaluating Human Health Impacts in Environmental Assessment: NOISE, at any receptor location identified by the Proponent on figure 3 of the document entitled Technical Data Report Noise Effects Assessment (Appendix E.10) (Canadian Impact Assessment</p>	<ul style="list-style-type: none"> CN notes that other noise sources unrelated to the Designated Project and beyond CN’s care and control may be added to the broader acoustic environment over time, resulting in changes that are greater than one to five decibels or an increase of more than 6.5% in the level of highly annoyed relative to the baseline that existed prior to the Project. These changes could occur over time regardless of any change attributable to the Designated Project. 	<p>CN therefore proposes the following revision to provide greater clarity:</p> <p>“The Proponent shall manage noise throughout all phases of the Designated Project so that the Designated Project causes the acoustic environment to change by less than one to five decibels, as set out in the U.S. Federal Transit Administration’s Transit Noise and Vibration Impact Assessment Manual, and the level of highly annoyed to change by no more than 6.5% from <i>the</i> baseline <i>as documented in the Technical Data Report Noise Effects Assessment (Appendix E.10) (Canadian Impact Assessment Registry Reference Number</i></p>

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	Registry Reference Number 80100, Document Number 57). In doing so, the Proponent shall:		<i>80100, Document Number 57</i>), as set out in Health Canada’s Guidance for Evaluating Human Health Impacts in Environmental Assessment: NOISE, at any receptor location identified by the Proponent on figure 3 of the document entitled Technical Data Report Noise Effects Assessment (Appendix E.10) (Canadian Impact Assessment Registry Reference Number 80100, Document Number 57). In doing so, the Proponent shall:”
4.6.1	construct, prior to operation, and maintain, throughout operation, vegetated noise berms with a minimum height of 5 metres within the Designated Project Development Area. The Proponent shall determine the locations of the berms prior to construction and shall provide that information to the Agency prior to construction;	<ul style="list-style-type: none"> • CN notes that a combination of noise berms and barriers was proposed and assessed during the EA, and observes this condition as drafted omits reference to noise barriers. • To retain flexibility in design while ensuring the intent of the condition is still met, CN suggests the condition focus on the desired outcome (<i>i.e.</i>, compliance with applicable noise thresholds) rather than specifying how the outcome must be achieved. 	To accommodate both noise berms and barriers, and allow design flexibility while ensuring the desired outcome, CN suggests the following alternative wording: “construct, prior to operation, and maintain, throughout operation, <i>noise barriers and/or</i> vegetated noise berms <i>with a minimum height of 5 metres</i> within the Designated Project Development Area. <i>The noise barriers and/or vegetated noise berms shall have a height of at least 5 metres unless noise modeling confirms that the Federal Transit Administration and Health Canada thresholds specified in condition 4.6 can be achieved with an alternative height.</i> The Proponent shall determine the locations <i>and heights</i> of the <i>barriers and/or</i> berms prior to construction and shall provide that information to the Agency prior to construction;”
4.6.5	require all employees and contractors associated with the Designated Project to abide by best practices for noise reduction during all activities occurring within and outside the Designated Project Development Area, including when travelling to and from the Area and during loading and unloading activities. The Proponent shall provide these best	<ul style="list-style-type: none"> • CN notes that the actions of employees and contractors outside of the Designated Project Development Area are outside of its care and control; while CN can <i>encourage</i> certain behaviours, it cannot require them. 	To make this condition feasible, CN suggests the following alternative wording: “require all employees and contractors associated with the Designated Project to abide by best practices for noise reduction during all activities occurring within <i>and outside</i> the Designated Project Development Area, including <i>when travelling to and</i>

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	practices to the Agency prior to implementing them; and		from the Area and during loading and unloading activities <i>and encourage all employees and contractors associated with the Designated Project to abide by best practices for noise reduction during all activities occurring outside the Designated Project Development Area, including when travelling to and from the Area.</i> The Proponent shall provide these best practices to the Agency prior to implementing them; and”
4.8	The Proponent shall conduct construction activities during daytime, unless not technically feasible. If the Proponent must conduct any construction activity that produces noise during nighttime, the Proponent shall notify the local community prior to undertaking the activity according to the communication protocol implemented pursuant to condition 4.7.	<ul style="list-style-type: none"> • See our related comments on Condition 1.7. • CN notes that the majority of construction activity will normally occur between the hours of 7 am and 6 pm. However, there may be times during construction when activity is required outside these hours. • Assuming CN’s suggested revision to the definition of daytime in Condition 1.7 is made, this condition would be manageable. If the definition of daytime is not revised as suggested, this condition as drafted could unduly constrain construction activity and require frequent community notification during the normal working day in winter. 	See our suggested revision to Condition 1.7.
4.10	The Proponent shall develop, prior to construction and in consultation with Health Canada, the Canadian Transportation Agency, the Mississaugas of the Credit First Nation, the Six Nations of the Grand River and other relevant authorities, a follow-up program to verify the accuracy of the environmental assessment and determine the effectiveness of mitigation measures as it pertains to adverse changes to the acoustic environment attributable to the Designated Project. The Proponent shall implement the follow-up program during all phases of the Designated Project. As part	<ul style="list-style-type: none"> • Given that the Project has no decommissioning phase, reference to “all phases of the Designated Project” is confusing. • As per our related comments on Condition 2.7.3, CN anticipates that the follow-up program developed pursuant to this condition would specify the initial duration of the follow-up program, after which an evaluation would be undertaken to determine whether the follow-up program should be updated and continued or has fulfilled the purposes of a follow-up program and is no longer warranted. 	For clarity and consistency, CN suggests the following revision: “The Proponent shall develop, prior to construction and in consultation with Health Canada, the Canadian Transportation Agency, the Mississaugas of the Credit First Nation, the Six Nations of the Grand River and other relevant authorities, a follow-up program to verify the accuracy of the environmental assessment and determine the effectiveness of mitigation measures as it pertains to adverse changes to the acoustic environment

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	of the implementation of the follow-up program, the Proponent shall compare changes to the acoustic environment attributable to the Designated Project against the thresholds for change referred to in condition 4.6. In doing so, the Proponent shall:	<ul style="list-style-type: none"> • CN notes the sub-conditions describe the timing and duration of monitoring associated with the follow-up program, which clarifies the minimum duration of the program. 	attributable to the Designated Project. The Proponent shall implement the follow-up program during <i>construction and operation</i> of the Designated Project <i>consistent with the timing and duration of monitoring outlined in conditions 4.10.1 and 4.10.2 below</i> . As part of the implementation of the follow-up program, the Proponent shall compare changes to the acoustic environment attributable to the Designated Project against the thresholds for change referred to in condition 4.6. In doing so, the Proponent shall:"
4.10.1	monitor day-night average sound levels continuously during the first four weeks of each of the three phases of construction, at locations to be determined as part of the development of the follow-up program;	<ul style="list-style-type: none"> • CN notes that the contractor may adjust construction activities into different phases. • CN understands the intention of this condition is to ensure that noise monitoring is conducted during each distinct period of noise generation during construction. • Construction phases will be defined in the construction schedule to be provided pursuant to Condition 15.2. 	To provide flexibility to the contractor while still fulfilling the intent of this condition, CN suggests the following alternative wording: "monitor day-night average sound levels continuously during the first four weeks of each of the three phases of construction <i>identified in the construction schedule provided pursuant to condition 15.2</i> , at locations to be determined as part of the development of the follow-up program;"
4.10.2	monitor day-night average sound levels continuously during the first four weeks of operation and during four additional weeks when the Designated Project operates at its full operational capacity, at locations to be determined as part of the development of the follow-up program;		
4.10.3	as part of the monitoring referred to in conditions 4.10.1 and 4.10.2, monitor low-frequency noise in a manner that allows comparison with the American National Standards Institute's Quantities and Procedures for Description and Measurement of Environmental Sound Part 4: Noise Assessment and Prediction of Long-Term Community Response (ANSI S12.9-2005/Part 4); and	<ul style="list-style-type: none"> • CN notes there are no sources of low frequency noise associated with Project construction. • CN observes that the reference in this condition to Condition 4.10.1 would require monitoring of low frequency noise during construction. 	To address this issue, CN suggests the following revision: "as part of the monitoring referred to in conditions 4.10.1 and 4.10.2, monitor low-frequency noise in a manner that allows comparison with the American National Standards Institute's Quantities and Procedures for Description and Measurement of

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			Environmental Sound Part 4: Noise Assessment and Prediction of Long-Term Community Response (ANSI S12.9-2005/Part 4); and”
4.10.4	develop and implement modified or additional mitigation measures if the results of the monitoring referred to in conditions 4.10.1 or 4.10.2 demonstrate that modified or additional mitigation measures are required to maintain changes to the acoustic environment attributable to the Designated Project within the thresholds for change referred to in condition 4.6, including in the area north of Britannia Road. The Proponent shall submit these measures to the Agency prior to implementing them.	<ul style="list-style-type: none"> See our comments on Condition 4.5.2. 	<p>CN suggests the same text be added to the end of this condition as suggested for Condition 4.5.2, as follows:</p> <p>“develop and implement modified or additional mitigation measures if the results of the monitoring referred to in conditions 4.10.1 or 4.10.2 demonstrate that modified or additional mitigation measures are required to maintain changes to the acoustic environment attributable to the Designated Project within the thresholds for change referred to in condition 4.6, including in the area north of Britannia Road. The Proponent shall submit these measures to the Agency prior to implementing them, <i>or, when immediate implementation is necessary to avoid or reduce an adverse environmental effect, as soon as possible following implementation.</i>”</p>
4.13	The Proponent shall implement measures to mitigate air emissions attributable to the Designated Project, including by:		
4.13.2	during construction, applying the tendering process to require third-party contractors to use zero-emission mobile and stationary off-road equipment for any physical activity undertaken in relation to the Designated Project or, if zero-emission equipment is not available, use equipment that:	<ul style="list-style-type: none"> These conditions are neither technically nor economically feasible as drafted. CN is not aware of any third-party contractors that can fulfil these requirements. While some contractors have indicated to CN that they are beginning to acquire equipment that meets Tier 4 emissions standards, no contractor indicated they would be able to ensure all equipment is zero-emission or meets Tier 4 emissions standards. 	<p>To make these conditions feasible, while maximizing the use of low-emission equipment during Project construction, CN suggests the following revisions:</p> <p>“during construction, applying the tendering process <i>to incentivize</i> third-party contractors <i>via the tender process</i> to use zero-emission mobile and stationary off-road equipment for any physical activity undertaken in relation to the Designated Project or, if zero-emission equipment is not available, use equipment that:”</p>

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4.13.2.1	uses diesel engines operating on diesel or low-carbon diesel fuel that meet, at a minimum, Tier 4 emissions standards and is equipped with verified diesel particulate filters and for which both the engines and the filters are maintained in accordance with maintenance instructions provided by the manufacturer; or	<ul style="list-style-type: none"> • While Tier 4 equipment exists, it is relatively new technology and is not yet standard equipment in the construction industry. • The Panel recognized that zero-emission and Tier 4 equipment are not yet in widespread use (e.g., Joint Review Panel Report, p. 52). • It is therefore neither technically nor economically feasible to require third-party contractors to use only zero-emission or Tier 4 compliant equipment. 	“uses diesel engines operating on diesel or low-carbon diesel fuel that meet <i>Tier 4 emissions standards where technically and economically feasible or</i> , at a minimum, Tier 3 emissions standards and is equipped with verified diesel particulate filters and for which both the engines and the filters are maintained in accordance with maintenance instructions provided by the manufacturer; or”
4.13.2.2	uses low-carbon fuel, which may include natural gas, propane or hydrogen, while meeting, at a minimum, Tier 4 emissions standards and being maintained in accordance with maintenance instructions provided by the manufacturer;	<ul style="list-style-type: none"> • CN notes that the assessment of potential effects of emissions on air quality, which the Panel found to be “limited” (Joint Review Panel Report, p. ii and 49), was based on conservative assumptions that equipment used during construction and operation would be Tier 1 or Tier 2 (among other conservative assumptions). • By adopting a minimum standard of Tier 3 equipment, with progressive implementation of Tier 4 equipment where feasible, it is expected that a reduction to predicted Project emissions will be achieved. • Tier 3 compliant equipment is in more widespread use in the construction industry. • The Panel recommended implementation of Tier 4 equipment (or better) <i>at such time as it becomes technically and economically feasible</i> (Recommendation 5.2) and to <i>incentivizing</i> zero-emission technology (Recommendation 5.4), not <i>requiring</i> it. CN agrees with this approach. • CN can incentivize third-party contractors to maximize the use of Tier 3 and Tier 4 equipment for the Project but cannot require it, as no third-party contractor would be able to fulfil the requirements. 	“uses low-carbon fuel, which may include natural gas, propane or hydrogen, while meeting <i>Tier 4 emissions standards where technically and economically feasible or</i> , at a minimum, Tier 3 emissions standards and being maintained in accordance with maintenance instructions provided by the manufacturer;”

#	Condition	Comments/Rationale	Suggested Revisions
4.14	The Proponent shall provide to the Agency, as part of the annual report referred to in condition 2.12, an update on the technical and economic feasibility of electrifying the Proponent-owned fleet of trucks that may serve the Designated Project. The Proponent shall provide that information annually until such time that the Proponent electrifies its truck fleet, or until the Proponent determines that electrifying the truck fleet is not technically or economically feasible. In providing that information, the Proponent shall:	<ul style="list-style-type: none"> Over time, electrification of trucks serving the Milton Logistics Hub, including but not limited to CN's own trucks, is expected to be a relevant factor for consideration in the review of the conditions related to air quality, as reflected in our comments on Condition 4.18 below. 	
4.14.1	Provide a rationale as to why the truck fleet has, or has not, been electrified; and		
4.14.2	Provide an update on the electric truck pilot project referred to by the Proponent in its Closing Statement Submission (Canadian Impact Assessment Registry Reference Number 80100, Document Number 972), including the results of the pilot project when it is completed.		
4.18	The Proponent shall review the air pollutant emissions reduction plans referred to in conditions 4.16 and 4.17, in consultation with Environment and Climate Change Canada and other relevant authorities, after the fifth year of operation and every five years thereafter. If the Proponent updates the plan(s), the Proponent shall submit any updated plan to the Agency, Environment and Climate Change Canada and other relevant authorities within 30 days of the plan(s) being updated.	<ul style="list-style-type: none"> CN notes that, with continuous improvement in equipment emissions reductions and potential electrification of trucks, as noted in our comment on Condition 4.14 above, it is conceivable that the need for and scope of air pollutant emissions reduction plans may change. Consistent with our comments on Condition 2.7.3, this condition should provide for that future consideration. 	<p>CN therefore suggests the following revision:</p> <p>“The Proponent shall review the air pollutant emissions reduction plans referred to in conditions 4.16 and 4.17, in consultation with Environment and Climate Change Canada and other relevant authorities, after the fifth year of operation and <i>every five years</i> thereafter <i>at a time to be determined during each review</i>. If the Proponent updates the plan(s), the Proponent shall submit any updated plan to the Agency, Environment and Climate Change Canada and other relevant authorities within 30 days of the plan(s) being updated.”</p>
4.19	During operation, the Proponent shall allow a maximum of 800 trucks to enter the Designated Project Development Area per 24-hour period to handle containerised goods.	<ul style="list-style-type: none"> CN recognizes the concerns this condition is intended to address and understands the community desires assurances that the Project will be operated in the manner proposed. 	<p>CN therefore suggests the following revisions:</p> <p>“During operation, the Proponent shall <i>manage the number of</i> trucks <i>entering</i> the Designated Project</p>

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		<ul style="list-style-type: none"> The condition should reflect the need for sufficient flexibility for the Project to operate competitively and efficiently, in the context of the supply chain of which it is an integral part. The Project is designed to handle 450,000 containers per year. The distribution of that container volume throughout the year and from day to day varies according to factors outside of CN’s care and control, including but not limited to customer decisions regarding scheduling, road conditions, weather conditions, blockades or other supply chain disruptions, holidays, and seasonal trends. The level of 800 trucks entering the terminal daily used for the purpose of assessment during the EA is an estimate based on the yearly design throughput of the facility averaged over the year, as well as other assumptions related to the operation of the terminal and its use by customers, including the variable factors listed above. An operational limit that does not accommodate the potential variability will effectively reduce the overall throughput of the facility, as well as its competitiveness and efficiency. Tracking of truck throughput should be derived (calculated) from the design capacity (i.e., container throughput) of the terminal and an average calculated over the course of the year in order to fairly reflect how the estimate was derived. To provide further assurance to the Agency and the community, CN proposes an additional condition to implement a follow-up program to annually evaluate the number of trucks serving 	<p>Development Area to handle containerised goods <i>such that the annual average daily number of trucks entering the terminal does not exceed 800.</i>”</p> <p>CN also proposes an additional new condition to develop and implement a follow-up program as follows:</p> <p><i>“4.19.1 The Proponent shall develop, prior to operation, a follow-up program to verify the accuracy of the environmental assessment and determine the effectiveness of mitigation measures as it pertains to the number of container trucks serving the terminal. The program shall be implemented throughout the operation of the Designated Project. As part of the implementation of the follow-up program, the Proponent shall:</i></p> <p><i>4.19.1.1 count the number of container trucks entering and exiting the terminal, including the number of trucks that enter with a container or without a container and the number of trucks that exit with a container or without a container; and</i></p> <p><i>4.19.1.2 develop and implement modified or additional mitigation measures if the results of the monitoring referred to in condition 4.19.1.1 indicate the number of container trucks entering the terminal exceeds an annual average daily volume of 800. The Proponent shall submit these measures to the Agency prior to implementing them.”</i></p>



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		<p>the terminal. As with other thresholds in these draft conditions, to the extent the adjusted average was in any given year exceeded, that would logically trigger an investigation into the underlying causes and a consideration of potential mitigation options. We have proposed language consistent with other threshold provisions that serve a similar purpose.</p> <ul style="list-style-type: none"> Finally, CN notes that this condition as drafted could in practice have unintended and undesired consequences, for example causing any excess truck(s) arriving at the terminal to stop and idle on local public roads while waiting for the opportunity to enter the terminal or to depart and return to the terminal again, effectively doubling the number of trips that would otherwise be taken by that truck on public roads. 	
4.20	<p>The Proponent shall develop, prior to construction and in consultation with Environment and Climate Change Canada, Health Canada, the Ontario Ministry of the Environment, Conservation and Parks, Halton Municipalities, the Town of Milton, the Mississaugas of the Credit First Nation and the Six Nations of the Grand River, a follow-up program to verify the accuracy of the environmental assessment and determine the effectiveness of mitigation measures as it pertains to adverse changes to air quality attributable to the Designated Project. The Proponent shall implement the follow-up program during construction and the first five years of operation. As part of the implementation of the follow-up program, the Proponent shall:</p>	<ul style="list-style-type: none"> CN notes that the term “Halton Municipalities” was used to identify a collaboration between the Regional Municipality of Halton, the City of Burlington, the Town of Halton Hills, the Town of Milton, and the Town of Oakville during those entities’ participation in the EA. CN understands the intent of this condition is to refer specifically to consultation with the Regional Municipality of Halton, commonly referred to as Halton Region, as well as the other listed parties. 	<p>CN suggests the following revision:</p> <p>“The Proponent shall develop, prior to construction and in consultation with Environment and Climate Change Canada, Health Canada, the Ontario Ministry of the Environment, Conservation and Parks, Halton <i>Region Municipalities</i>, the Town of Milton, the Mississaugas of the Credit First Nation and the Six Nations of the Grand River, a follow-up program to verify the accuracy of the environmental assessment and determine the effectiveness of mitigation measures as it pertains to adverse changes to air quality attributable to the Designated Project. The Proponent shall implement the follow-up program during construction and the first five years of operation. As part of the implementation of the follow-up program, the Proponent shall:”</p>



#	Condition	Comments/Rationale	Suggested Revisions
4.20.1	<p>conduct a pre-construction survey to reflect any change to the 2015-2016 air quality baseline information provided by the Proponent as part of the environmental assessment and update, as required based on current baseline information, predicted air quality concentrations set out in table 5-1 of the Joint Review Panel Report (Canadian Impact Assessment Registry Reference Number 80100, Document Number 985) and, for 1-hour and annual NO₂ concentrations, set out in tables 1 and 2 submitted by the Proponent in response to Information Request 4.29 (Canadian Impact Assessment Registry Reference Number 80100, Document Number 632). The Proponent shall submit any updated baseline information and any updated predictions to the Agency prior to construction;</p>	<ul style="list-style-type: none"> • This condition is not economically feasible as drafted. • CN bases this view specifically on the apparent requirement to conduct a year-long survey to update the baseline and the predicted air quality concentrations for annual NO₂ concentrations and to submit these updates to the Agency <i>prior to construction</i>. • CN notes this would result in more than a year’s delay in Project construction, taking into account the time that would be required to collect and process the data and re-run the air quality modeling. Such a delay would have a significant economic impact on CN and CN’s customers, in light of the need for the facility that has been expressed throughout the EA and was acknowledged by the Panel in its report. Such a delay would exacerbate the existing congestion and bottlenecks in the supply chain that are driving the urgent need for the facility. • While the Panel recommended that local air quality baseline information be updated prior to construction, the Panel did not contemplate a year-long survey. • CN notes that a complete year of baseline air quality data were already collected to inform the EA, including a large volume of site-specific and surrounding monitoring station data. • CN notes that the information submitted during the EA was accepted by the Review Panel as reasonable and that other publicly available information would be available to supplement this information. • CN observes that Table 5-1 of the Joint Review Panel Report is not an appropriate reference for 	<p>To make this condition feasible, while still meeting the Panel’s intent to identify changes in the baseline since the original baseline data were collected, CN proposes the following revisions:</p> <p>“conduct a pre-construction survey <i>and/or compile and analyze publicly available data</i> to reflect any change to the 2015-2016 air quality baseline information provided by the Proponent as part of the environmental assessment and update, as required based on current baseline information, predicted air quality concentrations set out in Attachment IR3.1-1 Milton Logistics Hub – On-site Air Quality Monitoring Report Update (Canadian Impact Assessment Registry Reference Number 80100, Document Number 613) and, for 1-hour and annual NO₂ concentrations, set out in tables 1 and 2 submitted by the Proponent in response to Information Request 4.29 (Canadian Impact Assessment Registry Reference Number 80100, Document Number 632). The Proponent shall submit any updated baseline information and any updated predictions to the Agency prior to construction;”</p>



#	Condition	Comments/Rationale	Suggested Revisions
		<p>baseline concentrations of air quality parameters, as it does not present the baseline values provided during the EA and also contains some incorrect values. The correct baseline reference to use in this condition would be to Attachment IR3.1-1 Milton Logistics Hub – On-site Air Quality Monitoring Report Update, included with the response to IR 3.1 (Canadian Impact Assessment Registry Reference Number 80100, Document Number 613).</p> <ul style="list-style-type: none"> • CN also observes that tables 1 and 2 in the response to IR 4.29 also are not appropriate references for baseline concentrations, as the values presented in the response to IR 4.29 are modelled maxima at the 98 points of reception, not overall predicted concentrations off-site. The correct baseline reference to use would, again, be the Attachment IR3.1-1, noted above. • CN is of the view that the Panel’s intent of updating local air quality baseline information can be met through a combination of pre-construction monitoring data collection and publicly available data. 	
4.20.6	<p>if the comparison undertaken pursuant to condition 4.20.4.1 or 4.20.4.2 demonstrates any exceedance of the air quality standards referred to in condition 4.20.4.1 or the predicted air quality concentrations referred to in 4.20.4.2, determine, in consultation with the parties involved in the development of the follow-up program, the source of any such exceedance. If the Proponent determines that the Designated Project is the source of the exceedance, the Proponent shall develop and implement modified or additional mitigation measures to ensure that ambient concentrations of contaminants monitored</p>	<ul style="list-style-type: none"> • CN notes that other emissions sources unrelated to the Designated Project are planned to be added over time, as outlined in municipal planning documents, resulting in changes to air quality concentrations that may result in an exceedance of the air quality standards referred to in condition 4.20.4.1 or the predicted air quality concentrations referred to in 4.20.4.2, regardless of any change attributed to the Designated Project. • Such changes from other emissions sources are beyond the care and control of CN. 	<p>CN therefore suggests the following revisions to make this condition feasible:</p> <p>“if the comparison undertaken pursuant to condition 4.20.4.1 or 4.20.4.2 demonstrates any exceedance of the air quality standards referred to in condition 4.20.4.1 or the predicted air quality concentrations referred to in 4.20.4.2, determine, in consultation with the parties involved in the development of the follow-up program, the source of any such exceedance. If the Proponent determines that the Designated Project is <i>contributing to</i> the</p>



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	pursuant to condition 4.20.2 or 4.20.3 remain within the levels referred to in condition 4.20.4.1 or 4.20.4.2. The Proponent shall submit these measures to the Agency prior to implementing them.	<ul style="list-style-type: none"> To be clear, CN cannot ensure the levels referred to in condition 4.20.4.1 or 4.20.4.2 will be met in the future. CN understands the intent of this condition is to ensure CN mitigates the potential effects of air emissions from the Designated Project. In any event, the extent to which CN would be required to implement modified or additional mitigation measures should be proportional to the Project's contribution to the exceedance. See also our comments on Condition 4.5.2. 	exceedance, the Proponent shall develop and implement modified or additional mitigation measures to <i>further mitigate emissions attributed to the Designated Project, if feasible, proportional to the Project's contribution to the exceedance</i> . The Proponent shall submit these measures to the Agency prior to implementing them <i>or, when immediate implementation is necessary to avoid or reduce an adverse environmental effect, as soon as possible following implementation.</i> "
5	Water	<ul style="list-style-type: none"> 	
5.1	The Proponent shall design and implement the Designated Project, in consultation with Conservation Halton, the Town of Milton, Environment and Climate Change Canada, Fisheries and Oceans Canada, other relevant authorities, the Mississaugas of the Credit First Nation and the Six Nations of the Grand River, such that baseline maximum and minimum flows of waterbodies affected by the Designated Project located outside of the Designated Project Development Area are maintained during all phases of the Designated Project, and that sufficient capacity exists to safely accommodate and convey the range of climate conditions that could be reasonably expected during the Designated Project's lifetime, including at least one Regional storm event.	<ul style="list-style-type: none"> As currently worded, this condition would require CN to match maximum and minimum flows observed during baseline conditions documented in support of the EIS. However, this would not account for inter-annual variation in flows due to climate (e.g., dry and wet years) or for changes in flows that may be caused by other changes up- or downstream of the site over which CN has no care or control. CN understands the intent of this condition to be the prevention of adverse impacts on flows due to the Project. 	To address these issues, CN suggests the following alternative wording: "The Proponent shall design and implement the Designated Project, in consultation with Conservation Halton, the Town of Milton, Environment and Climate Change Canada, Fisheries and Oceans Canada, other relevant authorities, the Mississaugas of the Credit First Nation and the Six Nations of the Grand River, such that <i>baseline</i> maximum and minimum flows of waterbodies affected by the Designated Project located outside of the Designated Project Development Area are <i>not adversely affected</i> during all phases of the Designated Project, and that sufficient capacity exists to safely accommodate and convey the range of climate conditions that could be reasonably expected during the Designated Project's lifetime, including at least one Regional storm event."
5.3	The Proponent shall not use salt for de-icing or traction control purposes within the Designated Project Development Area during any phase of the Designated Project, unless all other methods for de-	<ul style="list-style-type: none"> CN notes that the use of salt at strategic locations within the terminal is a matter of maintaining safe operations. 	The Proponent shall not use salt for de-icing or traction control purposes within the Designated Project Development Area during any phase of the Designated Project, unless <i>all</i> other <i>technically and</i>

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	<p>icing or traction control purposes do not meet requirements for safe railway and facility operation. If the Proponent must use salt, the Proponent shall develop and implement measures to mitigate salt loading into the stormwater management system. The Proponent shall provide these measures to the Agency prior to implementing them.</p>	<ul style="list-style-type: none"> The reference to “all other methods” is overly expansive and should be limited to other methods that are technically and economically feasible. CN notes that it committed to the preparation and implementation of a salt management plan (EIS Appendix E.15 (Canadian Impact Assessment Registry Reference Number 80100, Document Number 57) and Updated Consolidated Table of Mitigation Measures and Proponent Commitments (Canadian Impact Assessment Registry Reference Number 80100, Document Number 799), which would include measures contemplated by this condition. 	<p><i>economically feasible</i> methods for de-icing or traction control purposes <i>would result in unsafe construction conditions or unsafe railway or facility operation</i>. If the Proponent must use salt, the Proponent shall <i>prepare and implement a salt management plan, which shall include</i> measures to mitigate salt loading into the stormwater management system. The Proponent shall provide <i>this plan</i> to the Agency prior to implementing <i>it</i>.</p>
5.8	<p>The Proponent shall implement measures to mitigate the mobilization and transport of potential residual agricultural contaminants within the Designated Project Development Area towards the stormwater management system during all phases of the Designated Project, including measures to allow time for increased die-off of pathogenic organisms and volatilization of agricultural contaminants prior to soil disturbance and removal of nutrient compounds through plant harvesting.</p>	<ul style="list-style-type: none"> CN notes it is committed to implementing these measures in the EIS and no residual agricultural contaminants are expected. As currently drafted, this condition would preclude the use of the stormwater management ponds during construction to further mitigate any residual effects by collecting and managing surface runoff prior to discharge, which is a routine practice. CN understands the intent of this condition is to protect downstream waterbodies, fish, and fish habitat. 	<p>To better focus this condition on the desired outcome, without inadvertently precluding important mitigation, CN suggests the following alternative wording:</p> <p>“The Proponent shall implement measures to mitigate the mobilization and transport of potential residual agricultural contaminants within the Designated Project Development Area towards <i>receiving waterbodies</i> during all phases of the Designated Project, including measures to allow time for increased die-off of pathogenic organisms and volatilization of agricultural contaminants prior to soil disturbance and removal of nutrient compounds through plant harvesting.”</p>
5.10	<p>The Proponent shall develop, in consultation with Environment and Climate Change Canada, Conservation Halton and other relevant authorities, a follow-up program to verify the accuracy of the environmental assessment and determine the effectiveness of mitigation measures as it pertains to</p>	<ul style="list-style-type: none"> As per our related comments on Condition 2.7.3, CN anticipates that the follow-up program developed pursuant to this condition would specify the initial duration of the follow-up program, after which an evaluation would be undertaken to determine whether the follow-up 	<p>CN therefore suggests the following revisions:</p> <p>“The Proponent shall develop, in consultation with Environment and Climate Change Canada, Conservation Halton and other relevant authorities, a follow-up program to verify the accuracy of the</p>



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	adverse changes to surface water quality and quantity attributable to the Designated Project. The Proponent shall implement the follow-up program during construction and following the end of construction. As part of the implementation of the follow-up program, the Proponent shall:	<p>program should be updated and continued or has fulfilled the purposes of a follow-up program and is no longer warranted.</p> <ul style="list-style-type: none"> • CN notes the sub-conditions describe the timing and duration of monitoring associated with the follow-up program, which clarifies the minimum duration of the program. 	environmental assessment and determine the effectiveness of mitigation measures as it pertains to adverse changes to surface water quality and quantity attributable to the Designated Project. The Proponent shall implement the follow-up program during construction and following the end of construction <i>consistent with the timing and duration of monitoring outlined in conditions 5.10.1 and 5.10.2 below</i> . As part of the implementation of the follow-up program, the Proponent shall:"
5.10.1	monitor surface water quantity continuously during construction and for at least five years following the end of construction;	<ul style="list-style-type: none"> • CN notes that riparian vegetation will be established, the channel realignments will have completed their initial post-construction adjustments, and pond performance will normalize within three years of construction. • For these reasons, permitting conditions for channel realignments and SWM infrastructure commonly require monitoring for up to three years post-construction. • CN therefore considers three years to be the appropriate duration of post-construction monitoring of surface water and other matters related to the channel realignments and SWM system. • CN notes that Condition 5.10.5 would provide for a determination of the need for further monitoring at the end of the initial monitoring period. • CN notes that our suggested revision to Condition 2.7.3 would also ensure an evaluation of ongoing need for this follow-up program would be conducted. 	<p>CN therefore suggests the following revision:</p> <p>"monitor surface water quantity continuously during construction and for at least <i>three</i> years following the end of construction;"</p>
5.10.2	monitor surface water quality, during construction and for at least five years following the end of construction, at least monthly and during high flows and upset conditions. The Proponent shall determine	<ul style="list-style-type: none"> • See our related comments on Condition 5.10.1. 	<p>CN therefore suggests the following revision:</p> <p>"monitor surface water quality, during construction and for at least <i>three</i> years following the end of</p>

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	the water quality parameters to be monitored during the development of the follow-up program in order to support the comparison of measured parameters to the levels predicted during the environmental assessment;		construction, at least monthly and during high flows and upset conditions. The Proponent shall determine the water quality parameters to be monitored during the development of the follow-up program in order to support the comparison of measured parameters to the levels predicted during the environmental assessment;”
5.10.4	develop and implement modified or additional mitigation measures if the results of the monitoring referred to in condition 5.10.1 or 5.10.2 demonstrate that modified or additional mitigation measures are required to mitigate adverse changes to surface water quality and quantity attributable to the Designated Project, including so that water quality at locations where water flows towards the Designated Project Development Area is equivalent to water quality at locations where water flows away from the Designated Project Development Area. The Proponent shall submit these measures to the Agency prior to implementing them; and	<ul style="list-style-type: none"> • Water quality leaving the site is expected to be similar to but of course will not be identical to water quality entering the site. • The Project, including the stormwater management system and other measures, has been designed to protect downstream water quality and meet applicable water quality standards. • Some changes in water quality were predicted and assessed in the EA and determined to be not significantly adverse. • As currently worded, this condition may not be feasible, as it may not be possible to achieve “equivalence” in water quality entering and leaving the site. • See also our comments on Condition 4.5.2. 	<p>CN therefore suggests the following revision:</p> <p>“develop and implement modified or additional mitigation measures if the results of the monitoring referred to in condition 5.10.1 or 5.10.2 demonstrate that modified or additional mitigation measures are required to mitigate adverse changes to surface water quality and quantity attributable to the Designated Project, including so that water quality at locations where water flows towards the Designated Project Development Area is <i>not adversely affected</i> at locations where water flows away from the Designated Project Development Area. The Proponent shall submit these measures to the Agency prior to implementing them <i>or, when immediate implementation is necessary to avoid or reduce an adverse environmental effect, as soon as possible following implementation</i>; and”</p>
5.10.5	determine, in consultation with Environment and Climate Change Canada, Conservation Halton and other relevant authorities and based on the results of the monitoring referred to in conditions 5.10.1 and 5.10.2, if additional monitoring is required after the first five years following the end of construction.	<ul style="list-style-type: none"> • See our related comments on Condition 5.10.1. 	<p>CN therefore suggests the following revision:</p> <p>“determine, in consultation with Environment and Climate Change Canada, Conservation Halton and other relevant authorities and based on the results of the monitoring referred to in conditions 5.10.1 and 5.10.2, if additional monitoring is required after the first <i>three</i> years following the end of construction.”</p>
5.13	The Proponent shall develop, prior to construction and in consultation with Natural Resources Canada,	<ul style="list-style-type: none"> • As per our related comments on Condition 2.7.3, CN anticipates that the follow-up program 	CN therefore suggests the following revisions:

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	<p>Conservation Halton and other relevant authorities, a follow-up program to verify the accuracy of the environmental assessment and determine the effectiveness of mitigation measures as it pertains to adverse changes to groundwater quality and quantity attributable to the Designated Project. The Proponent shall implement the follow-up program during construction and following the end of construction. As part of the implementation of the follow-up program, the Proponent shall:</p>	<p>developed pursuant to this condition would specify the initial duration of the follow-up program, after which an evaluation would be undertaken to determine whether the follow-up program should be updated and continued or has fulfilled the purposes of a follow-up program and is no longer warranted.</p> <ul style="list-style-type: none"> • CN notes the sub-condition describes the timing and duration of monitoring associated with the follow-up program, which clarifies the minimum duration of the program. 	<p>“The Proponent shall develop, prior to construction and in consultation with Natural Resources Canada, Conservation Halton and other relevant authorities, a follow-up program to verify the accuracy of the environmental assessment and determine the effectiveness of mitigation measures as it pertains to adverse changes to groundwater quality and quantity attributable to the Designated Project. The Proponent shall implement the follow-up program during construction and following the end of construction <i>consistent with the timing and duration of monitoring outlined in condition 5.13.1 below</i>. As part of the implementation of the follow-up program, the Proponent shall:”</p>
5.13.1	<p>monitor, during construction and for a minimum of one year following the end of construction, groundwater levels and quality within the Designated Project Development Area and at private wells located within the Local Assessment Area defined by the Proponent on figure 6 of the document entitled Technical Data Report Hydrogeology (Appendix E.6) (Canadian Impact Assessment Registry Reference Number 80100, Document Number 57). In the event that the Proponent determines that construction dewatering is required pursuant to condition 5.12, the Proponent shall also monitor wells located within the projected dewatering cone of depression to determine the potential for drawdown interference; and</p>	<ul style="list-style-type: none"> • CN understands the intent of this condition is to focus on wells that are potentially affected by the Project. • CN notes that for private wells outside its care and control, access for the purpose of monitoring is subject to permission from the land and well owner and monitoring may not be feasible if such permission is not granted. 	<p>Monitor, during construction and for a minimum of one year following the end of construction, groundwater levels and quality within the Designated Project Development Area and, <i>if feasible</i>, at <i>potentially affected</i> private wells located within the Local Assessment Area defined by the Proponent on figure 6 of the document entitled Technical Data Report Hydrogeology (Appendix E.6) (Canadian Impact Assessment Registry Reference Number 80100, Document Number 57). In the event that the Proponent determines that construction dewatering is required pursuant to condition 5.12, the Proponent shall also monitor, <i>if feasible</i>, wells located within the projected dewatering cone of depression to determine the potential for drawdown interference; and</p>
5.13.2	<p>develop and implement modified or additional mitigation measures if the results of the monitoring referred to in condition 5.13.1 demonstrate that modified or additional measures are required to maintain groundwater quantity and quality as</p>	<ul style="list-style-type: none"> • See our comments on Condition 4.5.2. • For example, immediate implementation of mitigation measures may be warranted if groundwater monitoring during construction dewatering indicates that drawdown is having a 	<p>CN suggests the following revision:</p> <p>“develop and implement modified or additional mitigation measures if the results of the monitoring referred to in condition 5.13.1 demonstrate that</p>

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	<p>predicted by the Proponent as part of the environmental assessment in the document entitled Technical Data Report Hydrogeology (Appendix E.6) (Canadian Impact Assessment Registry Reference Number 80100, Document Number 57). The Proponent shall submit these measures to the Agency prior to implementing them.</p>	<p>potential adverse effect on groundwater quality or quantity in a monitored well,</p> <ul style="list-style-type: none"> The suggested revision here and in other similar conditions is intended to allow mitigation to be implemented immediately if necessary to avoid or reduce an adverse environmental effect, while ensuring the Agency is notified of the measures as soon as possible. 	<p>modified or additional measures are required to maintain groundwater quantity and quality as predicted by the Proponent as part of the environmental assessment in the document entitled Technical Data Report Hydrogeology (Appendix E.6) (Canadian Impact Assessment Registry Reference Number 80100, Document Number 57). The Proponent shall submit these measures to the Agency prior to implementing them <i>or, when immediate implementation is necessary to avoid or reduce an adverse environmental effect, as soon as possible following implementation.</i>"</p>
6	Terrestrial environment	<ul style="list-style-type: none"> 	
6.1	<p>The Proponent shall design, prior to construction and in consultation with Conservation Halton, the Mississaugas of the Credit First Nation and the Six Nations of the Grand River, and maintain, throughout operation, 7.1 hectares of replacement online and offline wetlands within the Designated Project Development Area in a manner that supports the maintenance of ecological functions in the Bronte Creek watershed and that enhances wetland habitat for turtle and breeding opportunities for wetland-dependant birds. In doing so, the Proponent shall establish the constructed riparian wetlands with emergent and native riparian vegetation. The Proponent shall construct the replacement wetlands before removing the existing wetlands, unless not technically or economically feasible.</p>	<ul style="list-style-type: none"> CN notes that Environment and Climate Change Canada is the relevant federal authority with specialist and expert information and knowledge regarding wetlands. CN notes that the habitat compensation and offsetting plan required as part of an authorization pursuant to the <i>Fisheries Act</i> will include the proposed wetlands, and that Fisheries and Oceans Canada is a relevant federal authority in this regard. See our related comments on Condition 2.17. 	<p>To ensure this condition includes the relevant federal authorities, CN suggests the following alternative wording:</p> <p>"The Proponent shall design, prior to construction and in consultation with <i>relevant authorities</i>, the Mississaugas of the Credit First Nation and the Six Nations of the Grand River, and maintain, throughout operation, 7.1 hectares of replacement online and offline wetlands within the Designated Project Development Area in a manner that supports the maintenance of ecological functions in the Bronte Creek watershed and that enhances wetland habitat for turtle and breeding opportunities for wetland-dependant birds. In doing so, the Proponent shall establish the constructed riparian wetlands with emergent and native riparian vegetation. The Proponent shall construct the replacement wetlands before removing the existing wetlands, unless not technically or economically feasible."</p>

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6.2	The Proponent shall design and maintain, throughout operation, drainage features around Designated Project components, including culverts beneath the mainline, to maintain baseline drainage and inflows and outflows to and from wetlands located within the Designated Project Development Area. In doing so, the Proponent shall:	<ul style="list-style-type: none"> • CN notes that the removal of certain wetlands within the PDA is proposed and was assessed during the EA and that “baseline drainage and inflows and outflows to and from” removed wetlands therefore cannot be maintained. 	<p>To ensure this condition reflects the proposed changes to on-site wetlands, CN suggests the following alternative wording:</p> <p>“The Proponent shall design and maintain, throughout operation, drainage features around Designated Project components, including culverts beneath the mainline, to maintain baseline drainage and inflows and outflows to and from <i>retained</i> wetlands located within the Designated Project Development Area. In doing so, the Proponent shall:”</p>
6.2.1	conduct, prior to construction and in consultation with Conservation Halton, a feature-based water balance analysis for all wetlands with drainage areas that may be affected by the Designated Project to understand the hydrological impacts of site alteration (including water inflows and outflows) on all wetlands located within the Designated Project Development Area and ensure their long-term viability;	<ul style="list-style-type: none"> • As noted above, the removal of certain wetlands within the PDA is proposed and was assessed during the EA and the “long-term viability” of removed wetlands therefore cannot be ensured. • CN notes that the Project may overlap with the drainage area of some wetlands located outside the PDA and CN-owned lands; while CN can address water flows within the PDA and on its lands, it does not have care and control over wetlands located outside those areas, and cannot ensure their long-term viability. CN can only address catchment area changes associated with the project. • See our related comments on Conditions 2.17 and 6.1. 	<p>To ensure this condition includes the relevant federal authorities and properly reflects both the proposed changes to on-site wetlands and the limits of CN’s care and control regarding off-site wetlands, CN suggests the following alternative wording:</p> <p>“conduct, prior to construction and in consultation with <i>relevant authorities</i>, a feature-based water balance analysis for all wetlands with drainage areas that may be affected by the Designated Project to understand the hydrological impacts of site alteration (including water inflows and outflows), and <i>ensure the long-term viability of all retained and proposed wetlands located within the Designated Project Development Area and mitigate adverse effects of the Project on drainage areas of wetlands located outside the Designated Project Development Area;</i>”</p>
6.3	The Proponent shall develop, prior to construction and in consultation with Environment and Climate Change Canada, Conservation Halton and other relevant authorities, a follow-up program to verify the accuracy of the environmental assessment and determine the effectiveness of the mitigation	<ul style="list-style-type: none"> • As per our related comments on Condition 2.7.3, CN anticipates that the follow-up program developed pursuant to this condition would specify the initial duration of the follow-up program, after which an evaluation would be undertaken to determine whether the follow-up 	<p>CN therefore suggests the following revision:</p> <p>“The Proponent shall develop, prior to construction and in consultation with Environment and Climate Change Canada, Conservation Halton and other relevant authorities, a follow-up program to verify the</p>

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	measures as it pertains to the adverse changes to wetlands and wetland functions attributable to the Designated Project. The Proponent shall implement the follow-up program following the end of construction. As part of the implementation of the follow-up program, the Proponent shall:	<p>program should be updated and continued or has fulfilled the purposes of a follow-up program and is no longer warranted.</p> <ul style="list-style-type: none"> • CN notes the sub-condition describes the timing and duration of monitoring associated with the follow-up program, which clarifies the minimum duration of the program. 	accuracy of the environmental assessment and determine the effectiveness of the mitigation measures as it pertains to the adverse changes to wetlands and wetland functions attributable to the Designated Project. The Proponent shall implement the follow-up program following the end of construction <i>consistent with the timing and duration of monitoring outlined in conditions 6.3.1 and 6.3.2 below</i> . As part of the implementation of the follow-up program, the Proponent shall:"
6.3.1	monitor, for at least five years following the end of construction, the areal extent, encroachment by invasive vegetation species and success of native vegetation planting for all retained and constructed wetlands located within the Designated Project Development Area;	<ul style="list-style-type: none"> • See our related comments on Condition 5.10.1. 	<p>CN therefore suggests the following revision:</p> <p>"monitor, for at least <i>three</i> years following the end of construction, the areal extent, encroachment by invasive vegetation species and success of native vegetation planting for all retained and constructed wetlands located within the Designated Project Development Area;"</p>
6.3.2	monitor, for at least five years following the end of construction, water level fluctuations in all retained and constructed wetlands located within the Designated Project Development Area and compare monitoring results against baseline fluctuations;	<ul style="list-style-type: none"> • See our related comments on Condition 5.10.1. 	<p>CN therefore suggests the following revision:</p> <p>"monitor, for at least <i>three</i> years following the end of construction, water level fluctuations in all retained and constructed wetlands located within the Designated Project Development Area and compare monitoring results against baseline fluctuations;"</p>
6.3.3	develop and implement modified or additional mitigation measures if the results of the monitoring referred to in condition 6.3.1 or 6.3.2 demonstrate that modified or additional mitigation measures are required such that the total areal extent of wetlands within the Designated Project Development Area is maintained or increased over time and retained and constructed wetlands maintain their functions over time. The Proponent shall submit these measures to the Agency prior to implementing them; and	<ul style="list-style-type: none"> • See our comments on Condition 4.5.2. 	<p>CN suggests the same text be added to the end of this condition as suggested for Condition 4.5.2, as follows:</p> <p>"develop and implement modified or additional mitigation measures if the results of the monitoring referred to in condition 6.3.1 or 6.3.2 demonstrate that modified or additional mitigation measures are required such that the total areal extent of wetlands within the Designated Project Development Area is</p>

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			<p>maintained or increased over time and retained and constructed wetlands maintain their functions over time. The Proponent shall submit these measures to the Agency prior to implementing them <i>or, when immediate implementation is necessary to avoid or reduce an adverse environmental effect, as soon as possible following implementation</i>; and”</p>
6.3.4	<p>determine, in consultation with Environment and Climate Change Canada, Conservation Halton and other relevant authorities and based on the results of the monitoring referred to in conditions 6.3.1 and 6.3.2, if additional monitoring is required after the first five years following the end of construction.</p>	<ul style="list-style-type: none"> See our related comments on Condition 5.10.1. 	<p>CN therefore suggests the following revision:</p> <p>“determine, in consultation with Environment and Climate Change Canada, Conservation Halton and other relevant authorities and based on the results of the monitoring referred to in conditions 6.3.1 and 6.3.2, if additional monitoring is required after the first <i>three</i> years following the end of construction.”</p>
6.9	<p>The Proponent shall conduct progressive reclamation of areas disturbed by the Designated Project. The Proponent shall use native Ontario species and non-invasive grass species when conducting reclamation.</p>	<ul style="list-style-type: none"> CN observes that most “areas disturbed by the Designated Project” are intended for other end uses associated with the Project itself, including Project infrastructure, new or enhanced habitat, and mitigation measures (such as noise berms and barriers, for example), all of which were assessed in the EA. Progressive reclamation of these areas will not be feasible. See our related comments on Condition 1.27. 	<p>To clarify the areas to which this condition would apply, CN suggests the following alternative wording:</p> <p>“The Proponent shall conduct progressive reclamation of areas disturbed by the Designated Project <i>that are being reclaimed and are not required for Project infrastructure</i>. The Proponent shall use native Ontario species and non-invasive grass species when conducting reclamation.”</p>
6.10	<p>The Proponent shall develop, prior to construction and in consultation with relevant authorities, a follow-up program to verify the accuracy of the environmental assessment and determine the effectiveness of the mitigation measures as it pertains to progressive reclamation of the Designated Project Development Area conducted pursuant to condition 6.9, including the establishment of native Ontario species and non-invasive grass species. The Proponent shall</p>	<ul style="list-style-type: none"> Given that the Project has no decommissioning phase, reference to “all phases of the Designated Project” is confusing. As per our related comments on Condition 2.7.3, CN anticipates that the follow-up program developed pursuant to this condition would specify the initial duration of the follow-up program, after which an evaluation would be undertaken to determine whether the follow-up program should be updated and continued or has 	<p>CN therefore suggests the following revision:</p> <p>“The Proponent shall develop, prior to construction and in consultation with relevant authorities, a follow-up program to verify the accuracy of the environmental assessment and determine the effectiveness of the mitigation measures as it pertains to progressive reclamation of the Designated Project Development Area conducted pursuant to condition 6.9, including the</p>

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	implement the follow-up program during all phases of the Designated Project.	fulfilled the purposes of a follow-up program and is no longer warranted.	establishment of native Ontario species and non-invasive grass species. The Proponent shall implement the follow-up program during <i>construction and following the end of construction until the review conducted pursuant to condition 2.7.3 determines the program is no longer required.</i>
7	Fish and fish habitat	<ul style="list-style-type: none"> • 	
7.6	The Proponent shall advise the Mississaugas of the Credit First Nation, the Six Nations of the Grand River and Conservation Halton on how the views and information they provided to the Proponent as part of the development of any offsetting plan(s) referred to in condition 7.5 have been considered by the Proponent, including a rationale for why the views and information have, or have not, been integrated, prior to submitting the offsetting plan(s) to Fisheries and Oceans Canada for approval. The Proponent shall submit that rationale to the Agency prior to implementing the approved offsetting plan(s).	<ul style="list-style-type: none"> • CN notes that the draft offsetting plan has already been submitted to Fisheries and Oceans Canada, consistent with advice provided by IAAC regarding engagement with other federal authorities during the EA process. • The plan was also presented to and reviewed with the Mississaugas of the Credit First Nation. 	Adjusting the condition for those facts, CN suggests the following alternative wording: “The Proponent shall advise the Mississaugas of the Credit First Nation, the Six Nations of the Grand River and Conservation Halton on how the views and information they provided to the Proponent as part of the development of any offsetting plan(s) referred to in condition 7.5 have been considered by the Proponent, including a rationale for why the views and information have, or have not, been integrated, prior to submitting the <i>final</i> offsetting plan(s) to Fisheries and Oceans Canada for <i>final</i> approval. The Proponent shall submit that rationale to the Agency prior to implementing the approved offsetting plan(s). ”
7.10	The Proponent shall realign Indian Creek and Tributary A in a manner that minimizes the extent and duration of flow diversions in existing channels, including by:		
7.10.3	not commissioning the realigned channels until such time that all realignment works are completed; and	<ul style="list-style-type: none"> • As currently worded, this condition could preclude the phased approach to realignment that was proposed and assessed in the EA. • The proposed realignment works for Indian Creek and Tributary A will be undertaken in a coordinated manner but independently of one another. 	To accommodate the proposed phased approach to channel re-alignments, CN suggests the following alternative wording: “not commissioning <i>each</i> realigned channels <i>or channel segment</i> until such time that all realignment works <i>in that channel or channel segment</i> are completed; and”

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		<ul style="list-style-type: none"> • Further, within each watercourse, channel realignment will occur in segments. • CN understands the intent of this condition is to protect water quality and fish and fish habitat by ensuring the newly constructed channels have stabilized adequately before water flow is re-introduced to them. 	
7.11	<p>The Proponent shall develop, prior to construction and in consultation with Fisheries and Oceans Canada and Conservation Halton, and implement, during operation, measures to mitigate increased temperature in water discharged from the stormwater management system such that collected overland runoff flows at a temperature no higher than baseline conditions, taking into account Ontario’s Stormwater Management Planning and Design Manual. As part of these measures, the Proponent shall:</p>		
7.11.2	<p>maintain permeable pavements over low-load parking lots and maintain grassed swales;</p>	<ul style="list-style-type: none"> • Prior to the hearing, CN provided the Joint Review Panel with the Updated Consolidated Table of Mitigation Measures and Proponent Commitments (Canadian Impact Assessment Registry Reference Number 80100, Document Number 799). In the correspondence accompanying that submission, CN explained that it had determined that the use of permeable pavement within the administration parking lot and other low-load parking areas was not technically feasible, due to constraints including limited hydraulic permeability associated with tight soils. • CN notes the stormwater management system has been designed to incorporate other feasible and effective measures to achieve thermal mitigation. 	<p>CN therefore suggests the following revision: <i>“maintain permeable pavements over low-load parking lots and maintain grassed swales;”</i></p>



#	Condition	Comments/Rationale	Suggested Revisions
7.11.3	install below-grade pipes, bottom draw outlet pipes, cooling towers and cooling trenches	<ul style="list-style-type: none"> • Cooling towers are not feasible for this Project, because there is no mechanical cooling water circulation system through which stormwater could be piped. • Cooling trenches are not technically feasible at this location due to soil and groundwater conditions. 	<p>CN therefore suggests the following revision:</p> <p>“install below-grade pipes, <i>and</i> bottom draw outlet pipes, cooling towers, <i>and or</i> cooling trenches”</p> <p>CN suggests this and the other sub-bullets in this condition could be removed, recognizing that Condition 7.11 itself provides sufficient certainty that the stormwater management plan will include thermal mitigation measures while providing flexibility to determine those measures in consultation with relevant authorities.</p>
7.11.4	release water from the stormwater management system only during nighttime, except during or within 48 hours of storm events.	<ul style="list-style-type: none"> • This element of Condition 7.11 is not feasible for the proposed system, and would create a significant risk of adverse consequences, including: <ul style="list-style-type: none"> ○ <i>greater</i> warming of water retained in the pond during the day; ○ pulsed water flows that are inconsistent with natural post-storm event flows; ○ residual water remaining in the stormwater management ponds between storms, reducing the capacity of the stormwater management system to handle each subsequent storm; and ○ greater erosion due to higher flows necessary at night to drain the ponds; • The stormwater management ponds have been designed to mimic existing conditions following a storm event, with continuous drawdown over time to slow discharge (hence preventing erosion) over several days. • This condition would conflict with other conditions that require CN to maintain flows. 	<p>CN suggests this sub-condition be removed as it is not feasible, will not achieve the desired outcome (thermal mitigation), and would create a significant risk of adverse consequences.</p>

#	Condition	Comments/Rationale	Suggested Revisions
		<ul style="list-style-type: none"> The stormwater management ponds have been designed with standard passive gravity discharge; this condition would require manual release of stormwater using a valve for each storm event. While a shut-off valve is included in the design of the stormwater pond for use in the event of an emergency (<i>i.e.</i>, spill containment), it is not intended as an active component of the stormwater management pond to regularly manage or control the discharge of stormwater runoff from the terminal. 	
7.12	<p>The Proponent shall develop, prior to construction and in consultation with Fisheries and Oceans Canada, Conservation Halton, the Mississaugas of the Credit First Nation and the Six Nations of the Grand River, a follow-up program to verify the accuracy of the environmental assessment and determine the effectiveness of mitigation measures as it pertains to adverse environmental effects on fish and fish habitat attributable to the Designated Project. The Proponent shall implement the follow-up program. As part of the implementation of the follow-up program, the Proponent shall:</p>		
7.12.5	<p>develop and implement modified or additional mitigation measures if the results of the monitoring referred to in condition 7.12.1, 7.12.2 or 7.12.3 demonstrate that modified or additional mitigation measures are required to mitigate adverse environmental effects on fish and fish habitat attributable to the Designated Project, including fish and fish habitat downstream of the Local Assessment Area, defined by the Proponent in section 3.2 of the document entitled Technical Data Report Fish and Fish Habitat (Appendix E.4) (Canadian Impact Assessment Registry Reference</p>	<ul style="list-style-type: none"> See our comments on Condition 4.5.2. 	<p>CN therefore suggests the following revisions:</p> <p>“develop and implement modified or additional mitigation measures if the results of the monitoring referred to in condition 7.12.1, 7.12.2 or 7.12.3 demonstrate that modified or additional mitigation measures are required to mitigate adverse environmental effects on fish and fish habitat attributable to the Designated Project, including fish and fish habitat downstream of the Local Assessment Area, defined by the Proponent in section 3.2 of the document entitled Technical Data</p>

#	Condition	Comments/Rationale	Suggested Revisions
	Number 80100, Document Number 57). The Proponent shall submit these measures to the Agency prior to implementing them; and		Report Fish and Fish Habitat (Appendix E.4) (Canadian Impact Assessment Registry Reference Number 80100, Document Number 57). The Proponent shall submit these measures to the Agency prior to implementing them <i>or, when immediate implementation is necessary to avoid or reduce an adverse environmental effect, as soon as possible following implementation;</i> and”
7.12.6	update the follow-up program, in consultation with Fisheries and Oceans Canada and Conservation Halton, at least every five years during operation, and provide any update(s) to the Agency, Fisheries and Oceans Canada and Conservation Halton within 30 days of the update(s) being made.	<ul style="list-style-type: none"> • CN notes that once the fish habitat, including the channel realignments, in the PDA has been fully established and demonstrated to be functioning as intended, it is conceivable that the follow-up program will no longer be required at some point in the future. At that point, a review and updating of the plans every five years will also become unwarranted. • See our related comments on Conditions 2.7.3 and 5.10.1. 	<p>CN suggests the following revision:</p> <p><i>“review and if necessary</i> update the follow-up program, in consultation with Fisheries and Oceans Canada and Conservation Halton, after the third <i>year</i> of operation and <i>thereafter at a time to be determined during each review until such time as it is determined the plans are no longer required,</i> and provide any update(s) to the Agency, Fisheries and Oceans Canada and Conservation Halton within 30 days of the update(s) being made.”</p>
8	Wildlife	<ul style="list-style-type: none"> • 	
8.4	The Proponent shall develop, prior to construction and in consultation with Environment and Climate Change Canada, a follow-up program to verify the accuracy of the environmental assessment and to determine the effectiveness of all mitigation measures to avoid harm to migratory birds, including migratory birds that are listed species at risk, their eggs and nests. The follow-up program shall include the mitigation measures used to comply with conditions 8.1 to 8.3, 8.12 and 8.24. The Proponent shall implement the follow-up program during all phases of the Designated Project.	<ul style="list-style-type: none"> • Given that the Project has no decommissioning phase, reference to “all phases of the Designated Project” is confusing. • As per our related comments on Condition 2.7.3, CN anticipates that the follow-up program developed pursuant to this condition would specify the initial duration of the follow-up program, after which an evaluation would be undertaken to determine whether the follow-up program should be updated and continued or has fulfilled the purposes of a follow-up program and is no longer warranted. 	<p>CN suggests the following revision:</p> <p><i>“The Proponent shall develop, prior to construction and in consultation with Environment and Climate Change Canada, a follow-up program to verify the accuracy of the environmental assessment and to determine the effectiveness of all mitigation measures to avoid harm to migratory birds, including migratory birds that are listed species at risk, their eggs and nests. The follow-up program shall include the mitigation measures used to comply with conditions 8.1 to 8.3, 8.12 and 8.24. The Proponent shall implement the follow-up program during <i>construction and operation until the review</i></i></p>

#	Condition	Comments/Rationale	Suggested Revisions
8.5	<p>The Proponent shall conduct, in consultation with Environment and Climate Change Canada and Conservation Halton, springtime pre-construction surveys of the Designated Project Development Area and of the Local Assessment Area, defined by the Proponent in section 3.2 of the document entitled Technical Data Report Terrestrial (Appendix E.16) (Canadian Impact Assessment Registry Reference Number 80100, Document Number 57), to identify the presence or absence of western chorus frog (<i>Pseudacris triseriata</i>) and breeding and hibernating sites (residences) for western chorus frog (<i>Pseudacris triseriata</i>) prior to carrying out any disturbance associated with the Designated Project. In doing so, the Proponent shall:</p>	<ul style="list-style-type: none"> • CN notes that, as drafted, this condition could be interpreted to preclude <i>any</i> construction or ground disturbance associated with the Designated Project anywhere in the PDA before western chorus frog surveys are conducted. • Habitat suitability mapping has been completed for the entire PDA and areas potentially suitable for western chorus frog are known. Much of the PDA is unsuitable for western chorus frog and activity in those areas would be unnecessarily constrained by this condition as drafted. • This condition should be focused on areas of the PDA where suitable habitat for western chorus frog is known to occur. • CN also notes that the survey methodology specified in Condition 8.5.1 below already specifies appropriate survey parameters, including but not limited to timing. 	<p><i>conducted pursuant to condition 2.7.3 determines the program is no longer required.</i>"</p> <p>CN therefore suggests the following revisions:</p> <p>"The Proponent shall conduct, <i>prior to carrying out any disturbance associated with the Designated Project in areas of habitat suitable for western chorus frog (<i>Pseudacris triseriata</i>)</i>, and in consultation with Environment and Climate Change Canada and Conservation Halton, <i>surveys of areas of habitat suitable for western chorus frog (<i>Pseudacris triseriata</i>) within the Designated Project Development Area and of the Local Assessment Area, defined by the Proponent in section 3.2 of the document entitled Technical Data Report Terrestrial (Appendix E.16) (Canadian Impact Assessment Registry Reference Number 80100, Document Number 57), to identify the presence or absence of western chorus frog (<i>Pseudacris triseriata</i>) and breeding and hibernating sites (residences) for western chorus frog (<i>Pseudacris triseriata</i>) prior to carrying out any disturbance associated with the Designated Project. In doing so, the Proponent shall."</i></p>
8.5.1	<p>develop the survey methodology in consultation with Environment and Climate Change Canada and Conservation Halton prior to conducting the surveys;</p>	<ul style="list-style-type: none"> • CN notes that the survey methodology for western chorus frog was already reviewed with Environment and Climate Change Canada and the agreed-upon method was used for all western chorus frog surveys completed in relation to the Project. • CN notes that use of consistent survey methodology allows for comparisons in data between years. 	<p>To ensure continuity and comparability of survey results, CN suggests the following alternative wording:</p> <p><i>"implement the survey methodology previously agreed upon with Environment and Climate Change Canada and Conservation Halton when conducting the surveys;"</i></p>
8.7	<p>The Proponent shall install, prior to construction and before the breeding season determined for that year</p>	<ul style="list-style-type: none"> • Western chorus frogs may use the existing railway embankment for hibernation. 	<p>CN therefore suggests the following revision:</p>



#	Condition	Comments/Rationale	Suggested Revisions
	<p>pursuant to condition 8.6.1, and maintain, during construction and operation, exclusion fencing between the railway tracks located within the Designated Project Development Area and breeding and hibernating sites (residences) for western chorus frog (<i>Pseudacris triseriata</i>) identified through the surveys conducted pursuant to condition 8.5.</p>	<ul style="list-style-type: none"> Exclusion fencing for western chorus frogs is proposed to be installed at the toe of the embankment slope <i>after</i> the frogs have left potential hibernating sites to prevent their return to those sites during construction in fall/winter, when there is a risk of mortality. If the exclusion fencing is maintained during operation, western chorus frogs would not be able to move between breeding and hibernating sites. Exclusion fencing cannot be safely installed at the top of the embankment slope (<i>i.e.</i>, immediately adjacent to the operating tracks). As no western chorus frog mortality risk was predicted in relation to the rail tracks, there is no need to exclude them from that area. 	<p>“The Proponent shall install, prior to construction and before the breeding season determined for that year pursuant to condition 8.6.1, and maintain, during construction and operation, exclusion fencing between the railway tracks located within the Designated Project Development Area and breeding and hibernating sites (residences) for western chorus frog (<i>Pseudacris triseriata</i>) identified through the surveys conducted pursuant to condition 8.5.”</p>
8.10	<p>The Proponent shall design, prior to construction and in consultation with Environment and Climate Change Canada and Conservation Halton, and construct ecopassages under the railway tracks located within the Designated Project Development Area to ensure habitat connectivity for western chorus frog (<i>Pseudacris triseriata</i>). The Proponent shall maintain these ecopassages throughout construction and operation.</p>	<ul style="list-style-type: none"> CN notes that the need for ecopassages under the railway tracks to maintain habitat connectivity for western chorus frog will depend on the location of habitats identified during the surveys contemplated in Condition 8.5 and the location of replacement habitats contemplated in Condition 8.9 relative to the railway tracks. This condition, as drafted, pre-supposes that there are and/or will be western chorus frog habitats on either side of the railway tracks. Depending on the location, ecopassages under the railway tracks may not be feasible due to variable grades of adjacent tracks. CN observes that municipal development plans for lands adjacent to the PDA contemplate the removal of existing western chorus frog habitat in the future with no proposed compensation plan; such removal could obviate the need for 	<p>CN suggests two possible options for addressing these issues:</p> <ol style="list-style-type: none"> Delete this condition and modify Condition 8.5.3 to incorporate reference to habitat connectivity: <p>“develop, in consultation with Environment and Climate Change Canada and Conservation Halton, and implement modified or additional mitigation measures, <i>including measures to maintain or enhance habitat connectivity</i>, if western chorus frog (<i>Pseudacris triseriata</i>) and/or breeding or hibernating sites (residences) for western chorus frog (<i>Pseudacris triseriata</i>) is identified through the surveys to mitigate adverse environmental effects on western chorus frog (<i>Pseudacris triseriata</i>) and/or its breeding or hibernating sites (residences) <i>or connectivity between these sites</i> attributable to the Designated Project during any phase of the</p>

#	Condition	Comments/Rationale	Suggested Revisions
		<p>perpetual maintenance of ecopassages in those areas.</p>	<p>Designated Project. The Proponent shall submit these measures to the Agency prior to implementing them.”</p> <p>2) Modify this condition to allow for an evaluation of the need for and appropriate design, including location, of habitat connectivity measures. Suggested wording:</p> <p><i>“The Proponent shall, prior to construction and in consultation with relevant authorities, evaluate the need to create, enhance, or maintain connectivity between the habitats identified through the surveys conducted pursuant to condition 8.5 and the replacement habitats established pursuant to condition 8.9 and design and implement appropriate habitat connectivity measures where needed.”</i></p>
<p>8.11</p>	<p>The Proponent shall develop, prior to construction and in consultation with Environment and Climate Change Canada and Conservation Halton, a follow-up program to verify the accuracy of the environmental assessment and the effectiveness of mitigation measures as it pertains to the adverse environmental effects on western chorus frog (<i>Pseudacris triseriata</i>) attributable to the Designated Project. The Proponent shall implement the follow-up program during all phases of the Designated Project. As part of the implementation of the follow-up program, the Proponent shall:</p>	<ul style="list-style-type: none"> Given that the Project has no decommissioning phase, reference to “all phases of the Designated Project” is confusing. As per our related comments on Condition 2.7.3, CN anticipates that the follow-up program developed pursuant to this condition would specify the initial duration of the follow-up program, after which an evaluation would be undertaken to determine whether the follow-up program should be updated and continued or has fulfilled the purposes of a follow-up program and is no longer warranted. 	<p>CN suggests the following revision:</p> <p>“The Proponent shall develop, prior to construction and in consultation with Environment and Climate Change Canada and Conservation Halton, a follow-up program to verify the accuracy of the environmental assessment and the effectiveness of mitigation measures as it pertains to the adverse environmental effects on western chorus frog (<i>Pseudacris triseriata</i>) attributable to the Designated Project. The Proponent shall implement the follow-up program during <i>construction and operation until the review conducted pursuant to condition 2.7.3 determines the program is no longer required</i>. As part of the implementation of the follow-up program, the Proponent shall:”</p>

#	Condition	Comments/Rationale	Suggested Revisions
8.11.4	develop and implement modified or additional mitigation measures if the results of the monitoring referred to in condition 8.11.1 or 8.11.2 demonstrate that modified or additional mitigation measures are required to mitigate adverse environmental effects on western chorus frog (<i>Pseudacris triseriata</i>) individuals attributable to the Designated Project. The Proponent shall submit these measures to the Agency prior to implementing them.	<ul style="list-style-type: none"> See our comments on Condition 4.5.2. 	<p>CN suggests the same text be added to the end of this condition as suggested for Condition 4.5.2, as follows:</p> <p>“develop and implement modified or additional mitigation measures if the results of the monitoring referred to in condition 8.11.1 or 8.11.2 demonstrate that modified or additional mitigation measures are required to mitigate adverse environmental effects on western chorus frog (<i>Pseudacris triseriata</i>) individuals attributable to the Designated Project. The Proponent shall submit these measures to the Agency prior to implementing them <i>or, when immediate implementation is necessary to avoid or reduce an adverse environmental effect, as soon as possible following implementation.</i>”</p>
8.14	The Proponent shall cause to be developed, prior to construction and in consultation with Environment and Climate Change Canada, a follow-up program to verify the accuracy of the environmental assessment and determine the effectiveness of the mitigation measures as it pertains to the suitable grassland habitat established pursuant to condition 8.13. The Proponent shall cause the follow-up program to be implemented for a period of 20 years following the start of construction. As part of the implementation of the follow-up program, the Proponent shall cause to:	<ul style="list-style-type: none"> CN proactively entered into an agreement with Ducks Unlimited Canada to establish and monitor the replacement grassland habitat in the Luther Marsh Wildlife Management Area and the replacement habitat was planted in 2019. Monitoring of the replacement habitat will commence in the year following habitat establishment. 	<p>CN therefore suggests the following revision:</p> <p>“The Proponent shall cause to be developed, prior to construction and in consultation with Environment and Climate Change Canada, a follow-up program to verify the accuracy of the environmental assessment and determine the effectiveness of the mitigation measures as it pertains to the suitable grassland habitat established pursuant to condition 8.13. The Proponent shall cause the follow-up program to be implemented for a period of 20 years following the <i>establishment of the replacement habitat</i>. As part of the implementation of the follow-up program, the Proponent shall cause to:”</p>
8.14.4	develop and implement, in consultation with Environment and Climate Change Canada, modified or additional mitigation measures and/or additional follow-up requirements if, after 20 years following the start of construction, the results of the monitoring	<ul style="list-style-type: none"> See our related comments on Condition 8.14. 	<p>CN therefore suggests the following revision:</p> <p>“develop and implement, in consultation with Environment and Climate Change Canada, modified or additional mitigation measures and/or additional</p>

#	Condition	Comments/Rationale	Suggested Revisions
	<p>referred to in condition 8.14.1 indicate that the suitable grassland habitat is not functioning as predicted during the environmental assessment as a replacement habitat for eastern meadowlark (<i>Sturnella magna</i>) and bobolink (<i>Dolichonyx oryzivorus</i>). The Proponent shall cause these modified or additional mitigation measures and/or additional follow-up requirements to be implemented until such time that monitoring results indicate that the suitable grassland habitat is functioning as predicted during the environmental assessment. The Proponent shall cause these modified or additional mitigation measures and/or additional follow-up requirements to be submitted to the Agency prior to them being implemented.</p>		<p>follow-up requirements if, after 20 years following the <i>establishment of the replacement habitat</i>, the results of the monitoring referred to in condition 8.14.1 indicate that the suitable grassland habitat is not functioning as predicted during the environmental assessment as a replacement habitat for eastern meadowlark (<i>Sturnella magna</i>) and bobolink (<i>Dolichonyx oryzivorus</i>). The Proponent shall cause these modified or additional mitigation measures and/or additional follow-up requirements to be implemented until such time that monitoring results indicate that the suitable grassland habitat is functioning as predicted during the environmental assessment. The Proponent shall cause these modified or additional mitigation measures and/or additional follow-up requirements to be submitted to the Agency prior to them being implemented.”</p>
8.22.3	<p>develop and implement modified or additional mitigation measures, taking into account Ontario’s Best Management Practices for Mitigating the Effects of Roads on Amphibian and Reptile Species at Risk in Ontario, if the results of the monitoring referred to in condition 8.21.1 or 8.21.2 demonstrate that modified or additional mitigation measures are required to mitigate the risk to turtles, including the risk of collisions with vehicles. The Proponent shall submit these measures to the Agency prior to implementing them.</p>	<ul style="list-style-type: none"> • See our comments on Condition 4.5.2. 	<p>CN suggests the same text be added to the end of this condition as suggested for Condition 4.5.2, as follows:</p> <p>“develop and implement modified or additional mitigation measures, taking into account Ontario’s Best Management Practices for Mitigating the Effects of Roads on Amphibian and Reptile Species at Risk in Ontario, if the results of the monitoring referred to in condition 8.21.1 or 8.21.2 demonstrate that modified or additional mitigation measures are required to mitigate the risk to turtles, including the risk of collisions with vehicles. The Proponent shall submit these measures to the Agency prior to implementing them <i>or, when immediate implementation is necessary to avoid or reduce an adverse environmental effect, as soon as possible following implementation.</i>”</p>

#	Condition	Comments/Rationale	Suggested Revisions
8.23	The Proponent shall submit sightings of turtles within the Designated Project Development Area during any phase of the Designated Project to the Natural Heritage Information Centre of the Ontario Ministry of Natural Resources and Forestry.	<ul style="list-style-type: none"> • CN notes that the PDA includes new and enhanced habitat areas specifically designed to provide habitat for turtles and that turtles are expected to occur there frequently (<i>i.e.</i>, daily). • CN understands the intent of this condition is to protect turtles from harm, which would be likely to result only if a turtle enters the developed areas of the PDA, <i>i.e.</i>, tracks, pads, roads, parking lots, from which turtles are supposed to be excluded (by fencing). 	<p>CN proposes the following revisions to clarify the intent of this condition:</p> <p>“The Proponent shall submit sightings of turtles within the <i>developed area of the</i> Designated Project Development Area, <i>including tracks, pads, roads, and parking lots</i>, during any phase of the Designated Project to the Natural Heritage Information Centre of the Ontario Ministry of Natural Resources and Forestry.”</p>
8.26	The Proponent shall develop, prior to construction and in consultation with Environment and Climate Change Canada, a follow-up program to verify the accuracy of the environmental assessment and determine the effectiveness of mitigation measures as it pertains to the adverse environmental effects on monarch butterfly (<i>Danaus plexippus</i>) attributable to the Designated Project. The Proponent shall implement the follow-up program throughout operation. As part of the implementation of the follow-up program, the Proponent shall:	<ul style="list-style-type: none"> • As per our related comments on Condition 2.7.3, CN anticipates that the follow-up program developed pursuant to this condition would specify the initial duration of the follow-up program, after which an evaluation would be undertaken to determine whether the follow-up program should be updated and continued or has fulfilled the purposes of a follow-up program and is no longer warranted. 	<p>CN therefore suggests the following revision:</p> <p>“The Proponent shall develop, prior to construction and in consultation with Environment and Climate Change Canada, a follow-up program to verify the accuracy of the environmental assessment and determine the effectiveness of mitigation measures as it pertains to the adverse environmental effects on monarch butterfly (<i>Danaus plexippus</i>) attributable to the Designated Project. The Proponent shall implement the follow-up program <i>during operation until the review conducted pursuant to condition 2.7.3 determines the program is no longer required</i>. As part of the implementation of the follow-up program, the Proponent shall:”</p>
8.26.4	develop and implement modified or additional mitigation if the results of the monitoring referred to in condition 8.26.1 or 8.26.2 demonstrate that modified or additional mitigation measures are required to mitigate the adverse environmental effects on monarch butterfly (<i>Danaus plexippus</i>) attributable to the Designated Project. The Proponent shall submit these measures to the Agency prior to implementing them.	<ul style="list-style-type: none"> • See our comments on Condition 4.5.2. 	<p>CN suggests the same text be added to the end of this condition as suggested for Condition 4.5.2, as follows:</p> <p>“develop and implement modified or additional mitigation if the results of the monitoring referred to in condition 8.26.1 or 8.26.2 demonstrate that modified or additional mitigation measures are required to mitigate the adverse environmental effects on monarch butterfly (<i>Danaus plexippus</i>)</p>

#	Condition	Comments/Rationale	Suggested Revisions
			attributable to the Designated Project. The Proponent shall submit these measures to the Agency prior to implementing them <i>or, when immediate implementation is necessary to avoid or reduce an adverse environmental effect, as soon as possible following implementation.</i>
8.29	The Proponent shall develop, prior to construction and in consultation with Environment and Climate Change Canada, a follow-up program to verify the accuracy of the environmental assessment and determine the effectiveness of the mitigation measures as it pertains to the adverse environmental effects on eastern milksnake (<i>Lampropeltis Triangulum</i>) attributable to the Designated Project. The Proponent shall implement the follow-up program. As part of the follow-up program, the Proponent shall:		
8.29.1	monitor sightings of eastern milksnake (<i>Lampropeltis Triangulum</i>) during all phases of the Designated Project;	<ul style="list-style-type: none"> • CN notes that the PDA includes new and enhanced habitat areas specifically designed to provide habitat for turtles and that turtles are expected to occur there frequently (<i>i.e.</i>, daily). • CN understands the intent of this condition is to protect eastern milksnake from harm, which would be likely to result only if a snake enters the developed areas of the PDA (<i>i.e.</i>, tracks, pads, roads, parking lots). 	CN therefore suggests the following revision, consistent with our comments on Condition 8.23: “monitor sightings of eastern milksnake (<i>Lampropeltis Triangulum</i>) <i>within the developed area of the Designated Project Development Area, including tracks, pads, roads, and parking lots,</i> during <i>any</i> phase of the Designated Project;”
8.29.3	develop and implement modified or additional mitigation measures if the results of the monitoring referred to in condition 8.29.1 demonstrate that modified or additional mitigation measures are required to mitigate the adverse environmental effects on eastern milksnake (<i>Lampropeltis Triangulum</i>) attributable to the Designated Project. The Proponent shall submit these measures to the Agency prior to implementing them.	<ul style="list-style-type: none"> • See our comments on Condition 4.5.2. 	CN suggests the same text be added to the end of this condition as suggested for Condition 4.5.2, as follows: “develop and implement modified or additional mitigation measures if the results of the monitoring referred to in condition 8.29.1 demonstrate that modified or additional mitigation measures are required to mitigate the adverse environmental



#	Condition	Comments/Rationale	Suggested Revisions
			<p>effects on eastern milksnake (<i>Lampropeltis Triangulum</i>) attributable to the Designated Project. The Proponent shall submit these measures to the Agency prior to implementing them <i>or, when immediate implementation is necessary to avoid or reduce an adverse environmental effect, as soon as possible following implementation.</i>"</p>
8.32	<p>The Proponent shall design, prior to construction and in consultation with Environment and Climate Change Canada, Halton Municipalities, Conservation Halton and other relevant authorities, and maintain, throughout operation, a system of culverts and ecopassages within the Designated Project Development Area, including through the mainline embankment, pad tracks, the pad, and associated roadways, to retain habitat connectivity for all terrestrial and aquatic species expected to be present within the Designated Project Development Area, including listed species at risk, while meeting engineering requirements for safe railway and facility operation. The Proponent shall design and maintain all culverts and ecopassages taking into account Ontario's Best Management Practices for Mitigating the Effects of Roads on Amphibian and Reptile Species at Risk in Ontario.</p>	<ul style="list-style-type: none"> It is not technically feasible to construct and maintain ecopassages through or under the pad tracks and pad due to structural engineering constraints imposed by the dynamic loading that will occur in those areas, as well as the dimensions of those areas (<i>i.e.</i>, length of a culvert or ecopassage would be limiting for some species) and the need to manage surface water drainage (<i>e.g.</i>, openings to allow light penetration would compromise the controls in place to manage stormwater and prevent accidental spills from entering watercourses). As noted during the hearing, the proposed culverts under the terminal will allow fish passage but cannot provide habitat connectivity for "all" species. See also our comments on Condition 4.20. 	<p>To make this condition feasible, CN therefore proposes the following revision:</p> <p>"The Proponent shall design, prior to construction and in consultation with Environment and Climate Change Canada, Halton <i>Region Municipalities</i>, Conservation Halton and other relevant authorities, and maintain, throughout operation, a system of culverts and ecopassages within the Designated Project Development Area, including through the mainline embankment, pad tracks, the pad, and associated roadways, to retain habitat connectivity for all terrestrial and aquatic species expected to be present within the Designated Project Development Area, including listed species at risk, while meeting engineering requirements for safe railway and facility operation. The Proponent shall design and maintain all culverts and ecopassages taking into account Ontario's Best Management Practices for Mitigating the Effects of Roads on Amphibian and Reptile Species at Risk in Ontario."</p>
8.33	<p>The Proponent shall develop, prior to construction and in consultation with Environment and Climate Change Canada, Halton Municipalities, Conservation Halton and other relevant authorities, a follow-up program to verify the accuracy of the environmental assessment and the effectiveness of mitigation measures as it pertains to the adverse</p>	<ul style="list-style-type: none"> CN notes that while it can design and construct culverts and ecopassages that are appropriate for use by wildlife, it cannot ensure that wildlife uses the culverts and ecopassages. Therefore, the measure of effectiveness contemplated by this condition must be focused on the design and maintenance of culverts and 	<p>To provide greater clarity in this condition, CN suggests the following revision:</p> <p>"The Proponent shall develop, prior to construction and in consultation with Environment and Climate Change Canada, Halton <i>Region Municipalities</i>, Conservation Halton and other relevant authorities, a</p>

#	Condition	Comments/Rationale	Suggested Revisions
	environmental effects on habitat connectivity attributable to the Designated Project, including the effectiveness of culverts and ecopassages referred to in condition 8.32. The Proponent shall implement the follow-up program throughout operation.	ecopassages, not on whether they are used by wildlife. <ul style="list-style-type: none"> • See our related comments on Condition 8.34.3. • See also our comments on Condition 4.20. 	follow-up program to verify the accuracy of the environmental assessment and the effectiveness of mitigation measures as it pertains to the adverse environmental effects on habitat connectivity attributable to the Designated Project, including the <i>appropriate design and maintenance</i> of culverts and ecopassages referred to in condition 8.32. The Proponent shall <i>ensure these connectivity features are available for use as designed</i> throughout operation.”
8.34	The Proponent shall develop, prior to construction and in consultation with Environment and Climate Change Canada, Halton Municipalities, Conservation Halton, the Mississaugas of the Credit First Nation, the Six Nations of the Grand River and other relevant authorities, a wildlife management and connectivity plan that takes into account the most recent detailed design of the Designated Project. The Proponent shall provide the plan to the Agency prior to construction. The Proponent shall implement the plan. The plan shall include:	<ul style="list-style-type: none"> • See our comments on Condition 4.20. 	CN suggests the following revision: “The Proponent shall develop, prior to construction and in consultation with Environment and Climate Change Canada, Halton <i>Region Municipalities</i> , Conservation Halton, the Mississaugas of the Credit First Nation, the Six Nations of the Grand River and other relevant authorities, a wildlife management and connectivity plan that takes into account the most recent detailed design of the Designated Project. The Proponent shall provide the plan to the Agency prior to construction. The Proponent shall implement the plan. The plan shall include:”
8.34.1	mapping of wildlife habitat, travel patterns and existing and planned wildlife corridors within the Regional Assessment Area, defined by the Proponent in section 3.3 of the document entitled Technical Data Report Terrestrial (Appendix E.16) (Canadian Impact Assessment Registry Reference Number 80100, Document Number 57);	<ul style="list-style-type: none"> • See our related comments on Conditions 2.14 and 3.2.1.4.1; CN notes that certain spatial information, such as the location of habitat, travel patterns, and wildlife corridors, may be sensitive, especially for species at risk, and should not be subject to public disclosure conditions. 	
8.34.2	how the Proponent shall maintain habitat connectivity for terrestrial species during all phases of the Designated Project, including how the Proponent has considered travel patterns and existing and planned wildlife corridors across the	<ul style="list-style-type: none"> • See our comments on Condition 4.20. 	CN suggests the following revision: “how the Proponent shall maintain habitat connectivity for terrestrial species during all phases of the Designated Project, including how the

#	Condition	Comments/Rationale	Suggested Revisions
	Regional Assessment Area and in adjacent lands within Halton Municipalities' Natural Heritage System during detailed design of the Designated Project;		Proponent has considered travel patterns and existing and planned wildlife corridors across the Regional Assessment Area and in adjacent lands within Halton <i>Region's Municipalities'</i> Natural Heritage System during detailed design of the Designated Project;"
8.34.3	how all travel corridors (including culverts and ecopassages referred to in condition 8.32) and buffering that the Proponent shall implement in the Designated Project Development Area are adequate (including their design and dimension) based on wildlife species expected to be present within the Designated Project Development Area;	<ul style="list-style-type: none"> • CN emphasizes that the adequacy of travel corridors can be measured only in terms of design fit for purpose, not actual use by wildlife. 	<p>CN suggests the following revision:</p> <p>"how all travel corridors (including culverts and ecopassages referred to in condition 8.32) and buffering that the Proponent shall implement in the Designated Project Development Area are adequate <i>in terms of</i> their design and dimension) based on wildlife species expected to be present within the Designated Project Development Area;</p>
8.34.4	how the detailed design and operation of the Designated Project's truck entrance on Britannia Road will not adversely affect Halton Municipalities' Natural Heritage System;	<ul style="list-style-type: none"> • This condition as drafted implies the truck entrance can have no or zero adverse environmental effects on the Natural Heritage System. • CN notes that potential environmental effects of the truck entrance on the Natural Heritage System, and measures to mitigate potential environmental effects, were described and assessed during the EA and no significant residual adverse environmental effects on the Natural Heritage System were predicted. • This condition should be drafted in a manner consistent with the findings of the EA, and specifically should contemplate the implementation of measures to mitigate potential adverse environmental effects. • See also our comments on Condition 4.20. 	<p>CN suggests the following revision:</p> <p>"how the detailed design and operation of the Designated Project's truck entrance on Britannia Road will <i>mitigate potential adverse effects on adversely affect</i> Halton <i>Region's Municipalities'</i> Natural Heritage System;"</p>
9	Human health		
9.1	The Proponent shall develop, prior to construction and in consultation with Health Canada and other		



#	Condition	Comments/Rationale	Suggested Revisions
	<p>relevant authorities, a follow-up program to verify the accuracy of the environmental assessment as it pertains to adverse environmental effects on human health caused by changes in concentrations of contaminants of potential concern in country foods attributable to the Designated Project. The Proponent shall implement the follow-up program during construction and for at least the first five years of operation. As part of the implementation of the follow-up program, the Proponent shall:</p>		
9.1.2	<p>develop and implement modified or additional mitigation measures if the results of the monitoring referred to in condition 9.1.1 demonstrate that modified or additional mitigation measures are required to ensure that concentrations of contaminants of potential concern in soils attributable to the Designated Project are below the Canadian Council of Ministers of the Environment’s <i>Soil Quality Guidelines for the Protection of Environmental and Human Health</i>. The Proponent shall submit these measures to the Agency prior to implementing them.</p>	<ul style="list-style-type: none"> • See our comments on Condition 4.5.2. 	<p>CN suggests the same text be added to the end of this condition as suggested for Condition 4.5.2, as follows:</p> <p>“develop and implement modified or additional mitigation measures if the results of the monitoring referred to in condition 9.1.1 demonstrate that modified or additional mitigation measures are required to ensure that concentrations of contaminants of potential concern in soils attributable to the Designated Project are below the Canadian Council of Ministers of the Environment’s <i>Soil Quality Guidelines for the Protection of Environmental and Human Health</i>. The Proponent shall submit these measures to the Agency prior to implementing them <i>or, when immediate implementation is necessary to avoid or reduce an adverse environmental effect, as soon as possible following implementation.</i>”</p>
10	Socioeconomic effects		
10.1	<p>The Proponent shall provide additional agricultural lease opportunities or rehabilitate or improve agricultural lands owned by the Proponent within properties adjacent to the Designated Project Development Area in consultation with Halton</p>	<ul style="list-style-type: none"> • See our comments on Condition 4.20. 	<p>CN suggests the following revision:</p> <p>“The Proponent shall provide additional agricultural lease opportunities or rehabilitate or improve agricultural lands owned by the Proponent within</p>



#	Condition	Comments/Rationale	Suggested Revisions
	Municipalities and representatives of local farmers and farming organizations, including the Halton Region Federation of Agriculture.		properties adjacent to the Designated Project Development Area in consultation with Halton <i>Region Municipalities</i> and representatives of local farmers and farming organizations, including the Halton Region Federation of Agriculture.”
11	Physical and cultural heritage and structures, sites or things of historical, archaeological, paleontological or architectural significance		
11.1	The Proponent shall assess, prior to construction, the condition of each cultural heritage property identified by the Proponent in table 6.4 of the document entitled Technical Data Report Cultural Heritage Assessment (Appendix E.3) (Canadian Impact Assessment Registry Reference Number 80100, Document Number 57) using photographic records.	<ul style="list-style-type: none"> • In referencing Table 6.4 of the Technical Data Report, this condition as drafted (as well as Conditions 11.4, 11.5 and 11.6 that also rely on Table 6.4) would trigger action by CN for properties that are not owned by CN and are therefore outside CN’s care and control. • Specifically, three of the seven cultural heritage resources listed in Table 6.4 are not owned by CN, and therefore CN is not able to assess the condition of these non-CN-owned heritage properties beyond what was already completed in support of the Cultural Heritage Assessment. • To be clear, CN would be willing to assess, prior to construction, the condition of non-CN-owned cultural heritage resources at the request of the resource owner; however, CN could only conduct such an assessment if the resource owner grants permission to do so. • Further, the condition as drafted makes reference to cultural heritage “property,” as opposed to cultural heritage “resource”; it is the dwellings and other structures that possess heritage value that comprise the cultural heritage resource with the potential to be affected by the Project construction activities. As explained in more detail in relation to Condition 11.3, the appropriate distinction between property and resource will be important to ensure the condition is feasible and serves to protect the resource. 	<p>CN therefore suggests the following revisions:</p> <p>“The Proponent shall assess, prior to construction, the condition of each <i>CN-owned</i> cultural heritage <i>resource property</i> identified by the Proponent in table 6.4 of the document entitled Technical Data Report Cultural Heritage Assessment (Appendix E.3) (Canadian Impact Assessment Registry Reference Number 80100, Document Number 57) using photographic records.”</p>



#	Condition	Comments/Rationale	Suggested Revisions
11.3	The Proponent shall not carry out any construction activity associated with the Designated Project within 50 metres of any cultural heritage property referred to in condition 11.1, unless required to meet engineering requirements for safe railway and facility operation. If the Proponent must carry out any construction activity within 50 metres of a cultural heritage property, the Proponent shall:	<ul style="list-style-type: none"> Where construction is proposed or required adjacent to a cultural heritage resource (<i>i.e.</i>, dwelling or structure), the EIS recommended that a 50 m setback be maintained and/or that vibration monitoring be undertaken during construction. The condition as drafted is potentially unclear with respect to the determination of where construction activities may occur, due to the reference to “safe railway and facility operation,” which may not appear to be linked to construction. To be clear, CN is of the view that all construction activities required to construct the Project are fundamental to safe railway and facility operation. This includes grading, SWM pond construction, or other activities that may be necessary within 50 m of a cultural heritage resource. Further, it should be clarified that the setback outlined in this condition should apply to the cultural heritage resource (<i>i.e.</i>, the structure that possesses heritage value), not the property (<i>i.e.</i>, property line) itself. In this regard, see our related comments on Condition 11.1. 	<p>CN therefore suggests the following revisions:</p> <p>“The Proponent shall not carry out any construction activity associated with the Designated Project within 50 metres of any cultural heritage <i>resource property</i> referred to in condition 11.1, unless required to <i>accommodate construction or to</i> meet engineering requirements for safe railway and facility operation. If the Proponent must carry out any construction activity within 50 metres of a dwelling or structure associated with a cultural heritage <i>resource property</i>, the Proponent shall:”</p>
11.3.1	determine, prior to carrying out any such construction activity, maximum acceptable vibration levels that shall not be exceeded to protect the property;	<ul style="list-style-type: none"> See our related comments on Condition 11.1. 	<p>CN therefore suggests the following revision:</p> <p>“determine, prior to carrying out any such construction activity, maximum acceptable vibration levels that shall not be exceeded to protect the <i>resource property</i>,”</p>
11.3.2	conduct continuous monitoring, during any such construction activity, of vibration levels at the property; and	<ul style="list-style-type: none"> See our related comments on Condition 11.1. 	<p>CN therefore suggests the following revision:</p> <p>“conduct continuous monitoring, during any such construction activity, of vibration levels at the <i>resource property</i>; and”</p>

#	Condition	Comments/Rationale	Suggested Revisions
11.3.3	develop and implement modified or additional mitigation measures if the results of the monitoring referred to in condition 11.3.2 exceed the maximum acceptable vibration levels determined pursuant to condition 11.3.1 to ensure that vibration levels remain below acceptable levels. The Proponent shall submit these measures to the Agency prior to implementing them.	<ul style="list-style-type: none"> See our comments on Condition 4.5.2. 	<p>CN suggests the same text be added to the end of this condition as suggested for Condition 4.5.2, as follows:</p> <p>“develop and implement modified or additional mitigation measures if the results of the monitoring referred to in condition 11.3.2 exceed the maximum acceptable vibration levels determined pursuant to condition 11.3.1 to ensure that vibration levels remain below acceptable levels. The Proponent shall submit these measures to the Agency prior to implementing them <i>or, when immediate implementation is necessary to avoid or reduce an adverse environmental effect, as soon as possible following implementation.</i>”</p>
11.4	The Proponent shall inspect each cultural heritage property referred to in condition 11.1 as soon as practical after construction in the vicinity of each property has ended and shall compare the property’s condition after construction to its condition prior to construction, based on the photographic records made pursuant to condition 11.1, to determine if any vibration-related damage has occurred as a result of construction. If the inspection demonstrates that vibration-related damage has occurred, the Proponent shall make the necessary repairs to the damaged property in a timely manner.	<ul style="list-style-type: none"> See our related comments on Condition 11.1. In addition, this condition as drafted would require post-construction assessments for cultural heritage resources outside of the area where construction-related effects would potentially occur. Specifically, the potential for construction-related effects does not exist beyond 50 m of a cultural heritage resource. As such, CN proposes that this condition be limited to only those locations where construction activities occurred within 50 m of a cultural heritage resource. Further, as noted in relation to Condition 11.1, CN would be willing to inspect non-CN-owned cultural heritage resources post-construction if a pre-construction assessment of the resource was conducted at the request of the resource owner and if the inspection is also requested by the resource owner; however, CN could only conduct such an inspection and make necessary repairs 	<p>CN therefore suggests the following revisions:</p> <p>“The Proponent shall inspect each <i>CN-owned cultural heritage resource property</i> referred to in condition 11.1 <i>where construction activity occurred within 50 m</i>, as soon as practical after construction in the vicinity of each <i>resource property</i> has ended, and shall compare the <i>resource’s property’s</i> condition after construction to its condition prior to construction, based on the photographic records made pursuant to condition 11.1, to determine if any vibration-related damage has occurred as a result of construction. If the inspection demonstrates that vibration-related damage has occurred, the Proponent shall make the necessary repairs to the damaged <i>resource property</i> in a timely manner.”</p>



#	Condition	Comments/Rationale	Suggested Revisions
		<p>of vibration-related damage, if any occurred, if the resource owner grants permission to do so.</p>	
11.5	<p>The Proponent shall develop, prior to construction and in consultation with the Ontario Ministry of Heritage, Sport, Tourism and Culture, the Town of Milton and potentially affected parties, a cultural heritage property maintenance and re-use plan in relation to all cultural heritage properties referred to in condition 11.1. The Proponent shall implement the plan throughout all phases of the Designated Project. As part the plan, the Proponent shall set out:</p>	<ul style="list-style-type: none"> • See our related comments on Condition 11.1. • In addition, this condition as drafted would create a potential conflict with Condition 11.6 as a result of requiring the implementation of the plan “throughout all phases” of the project. • Specifically, Condition 11.6 provides for the assessment, after three years, of options for long-term management of cultural heritage resources, which may include preservation, relocation, or demolition (with mitigation). If that assessment determines that relocation or demolition with mitigation) is the appropriate option, this Condition 11.5 should no longer apply. • Of note, the word "Industries" appears to have been inadvertently omitted from the name of the Ministry of Heritage, Sport, Tourism and Culture Industries in this condition. This omission occurs also in Conditions 11.6, 11.7, and 11.8 (including sub-conditions). 	<p>CN suggests the following revision:</p> <p>“The Proponent shall develop, prior to construction and in consultation with the Ontario Ministry of Heritage, Sport, Tourism and Culture <i>Industries</i>, the Town of Milton and potentially affected parties, a cultural heritage <i>resource property</i> maintenance and re-use plan in relation to all <i>CN-owned</i> cultural heritage <i>resources properties</i> referred to in condition 11.1. <i>The Proponent shall implement the plan throughout all phases of the Designated Project, unless an assessment conducted pursuant to condition 11.6 determines a resource is to be relocated or demolished.</i> As part the plan, the Proponent shall set out:”</p>
11.5.1	<p>how the Proponent shall preserve the value of all cultural heritage properties;</p>	<ul style="list-style-type: none"> • See our related comments on Condition 11.1. 	<p>CN therefore suggests the following revision:</p> <p>“how the Proponent shall preserve the value of all cultural heritage <i>resources properties</i>;”</p>
11.5.2	<p>how the Proponent shall secure all cultural heritage properties, prior to construction, and inspect and maintain them in working order, during all phases of the Designated Project, or until such time any viable adaptive re-use is identified for any given property; and</p>	<ul style="list-style-type: none"> • See our related comments on Condition 11.1. 	<p>CN therefore suggests the following revision:</p> <p>“how the Proponent shall secure all cultural heritage <i>resources properties</i>, prior to construction, and inspect and maintain them in working order, during all phases of the Designated Project, or until such time any viable adaptive re-use is identified for any given <i>resource property</i>; and”</p>

#	Condition	Comments/Rationale	Suggested Revisions
11.5.3	the criteria that may be used to identify any feasible adaptive re-use for any given cultural heritage property and, if an adaptive re-use is identified for a property, to determine the terms of that re-use.	<ul style="list-style-type: none"> See our related comments on Condition 11.1. 	<p>CN therefore suggests the following revision:</p> <p>“the criteria that may be used to identify any feasible adaptive re-use for any given cultural heritage <i>resource property</i> and, if an adaptive re-use is identified for a <i>resource property</i>, to determine the terms of that re-use.”</p>
11.6	If, for any cultural heritage property referred to in condition 11.1, the Proponent has not identified a feasible adaptive re-use pursuant to the criteria referred in condition 11.5.3 three years after the beginning of operation, the Proponent shall conduct, in consultation with the Ontario Ministry of Heritage, Sport, Tourism and Culture, Halton Municipalities and the Town of Milton, a Heritage Impact Assessment to determine whether the property(ies) should be preserved, relocated or demolished with appropriate mitigation. The Proponent shall submit the results of the Heritage Impact Assessment to the Agency, the Ontario Ministry of Heritage, Sport, Tourism and Culture, the Town of Milton and potentially affected parties within 30 days of the Heritage Impact Assessment being completed.	<ul style="list-style-type: none"> See our related comments on Conditions 11.1 and 11.5. In addition, CN is not in a position to propose the re-use of cultural heritage resources outside of its care and control (<i>i.e.</i>, owned by a third party), nor is it appropriate for CN to complete a Heritage Impact Assessment to recommend the preservation, relocation, or demolition of such resources. See also our comments on Condition 4.20. 	<p>CN therefore suggests the following revisions:</p> <p>“If, for any <i>CN-owned</i> cultural heritage <i>resource property</i> referred to in condition 11.1, the Proponent has not identified a feasible adaptive re-use pursuant to the criteria referred <i>to</i> in condition 11.5.3 three years after the beginning of operation, the Proponent shall conduct, in consultation with the Ontario Ministry of Heritage, Sport, Tourism and Culture <i>Industries</i>, Halton <i>Region Municipalities</i> and the Town of Milton, a Heritage Impact Assessment to determine whether the <i>resource(s) property(ies)</i> should be preserved, relocated or demolished with appropriate mitigation. The Proponent shall submit the results of the Heritage Impact Assessment to the Agency, the Ontario Ministry of Heritage, Sport, Tourism and Culture <i>Industries</i>, the Town of Milton and potentially affected parties within 30 days of the Heritage Impact Assessment being completed.”</p>
11.7	The Proponent shall conduct any controlled salvage excavation of archaeological resources required for the Designated Project during any phase of the Designated Project in consultation with the Mississaugas of the Credit First Nation, the Six Nations of the Grand River and the Huron-Wendat Nation and taking into account the Ontario Ministry	<ul style="list-style-type: none"> See our comments on Condition 11.5. 	<p>CN suggests the following revision:</p> <p>“The Proponent shall conduct any controlled salvage excavation of archaeological resources required for the Designated Project during any phase of the Designated Project in consultation with the Mississaugas of the Credit First Nation, the Six Nations of the Grand River and the Huron-Wendat</p>

#	Condition	Comments/Rationale	Suggested Revisions
	of Heritage, Sport, Tourism and Culture's Standards and Guidelines for Consultant Archaeologists.		Nation and taking into account the Ontario Ministry of Heritage, Sport, Tourism and Culture's <i>Industries'</i> Standards and Guidelines for Consultant Archaeologists."
11.8	The Proponent shall develop, prior to construction and in consultation with the Ontario Ministry of Heritage, Sport, Tourism and Culture, the Mississaugas of the Credit First Nation, the Six Nations of the Grand River and the Huron-Wendat Nation, an archaeological and cultural resources protection plan for any previously unidentified structures, sites or things of historical, archaeological, paleontological or architectural significance discovered within the Designated Project Development Area. The Proponent shall implement the plan during all phases of the Designated Project. As part of the plan, the Proponent shall set out:	<ul style="list-style-type: none"> See our comments on Condition 11.5. 	<p>CN suggests the following revision:</p> <p>"The Proponent shall develop, prior to construction and in consultation with the Ontario Ministry of Heritage, Sport, Tourism and Culture <i>Industries</i>, the Mississaugas of the Credit First Nation, the Six Nations of the Grand River and the Huron-Wendat Nation, an archaeological and cultural resources protection plan for any previously unidentified structures, sites or things of historical, archaeological, paleontological or architectural significance discovered within the Designated Project Development Area. The Proponent shall implement the plan during all phases of the Designated Project. As part of the plan, the Proponent shall set out:"</p>
11.8.1.3	inform the Agency, the Ontario Ministry of Heritage, Sport, Tourism and Culture, Halton Municipalities, the Mississaugas of the Credit First Nation, the Six Nations of the Grand River and the Huron-Wendat Nation within 24 hours of the discovery, and allow the Mississaugas of the Credit First Nation, the Six Nations of the Grand River and the Huron-Wendat Nation to monitor archaeological works at the location of the discovery;	<ul style="list-style-type: none"> See our comments on Conditions 4.20 and 11.5. 	<p>CN suggests the following revisions:</p> <p>"inform the Agency, the Ontario Ministry of Heritage, Sport, Tourism and Culture <i>Industries</i>, Halton <i>Region Municipalities</i>, the Mississaugas of the Credit First Nation, the Six Nations of the Grand River and the Huron-Wendat Nation within 24 hours of the discovery, and allow the Mississaugas of the Credit First Nation, the Six Nations of the Grand River and the Huron-Wendat Nation to monitor archaeological works at the location of the discovery;"</p>
11.8.1.5	consult with the Ontario Ministry of Heritage, Sport, Tourism and Culture, Halton Municipalities, the Mississaugas of the Credit First Nation, the Six Nations of the Grand River and the Huron-Wendat	<ul style="list-style-type: none"> See our comments on Conditions 4.20 and 11.5. 	<p>CN suggests the following revisions:</p> <p>"consult with the Ontario Ministry of Heritage, Sport, Tourism and Culture <i>Industries</i>, Halton <i>Region</i></p>

#	Condition	Comments/Rationale	Suggested Revisions
	<p>Nation with respect to applicable legislative or legal requirements and associated regulations and protocols respecting the discovery, recording, transferring and safekeeping of previously unidentified structures, sites or things of historical, archaeological, paleontological or architectural significance.</p>		<p><i>Municipalities</i>, the Mississaugas of the Credit First Nation, the Six Nations of the Grand River and the Huron-Wendat Nation with respect to applicable legislative or legal requirements and associated regulations and protocols respecting the discovery, recording, transferring and safekeeping of previously unidentified structures, sites or things of historical, archaeological, paleontological or architectural significance.”</p>
<p>11.9</p>	<p>The Proponent shall develop, prior to construction and in consultation with the Mississaugas of the Credit First Nation, the Six Nations of the Grand River, the Huron-Wendat Nation and the Ontario Ministry of Heritage, Sport, Tourism and Culture a procedure with respect to the discovery, handling, recognition, recording, transferring and safekeeping of any human remain (including any ossuary) discovered within the Designated Project Development Area during any phase of the Designated Project. As part of the procedure, the Proponent shall:</p>	<ul style="list-style-type: none"> • See our comments on Condition 11.5. 	<p>CN suggests the following revision:</p> <p>“The Proponent shall develop, prior to construction and in consultation with the Mississaugas of the Credit First Nation, the Six Nations of the Grand River, the Huron-Wendat Nation and the Ontario Ministry of Heritage, Sport, Tourism and Culture <i>Industries</i> a procedure with respect to the discovery, handling, recognition, recording, transferring and safekeeping of any human remain (including any ossuary) discovered within the Designated Project Development Area during any phase of the Designated Project. As part of the procedure, the Proponent shall:”</p>
<p>11.11</p>	<p>The Proponent shall discuss with the Mississaugas of the Credit First Nation, the Six Nations of the Grand River and the Huron-Wendat Nation about opportunities to return artifacts of Indigenous origin excavated as part of the environmental assessment to the communities for preservation and interpretation. The Proponent shall seek consent from the Mississaugas of the Credit First Nation, the Six Nations of the Grand River and the Huron-Wendat Nation before including, as part of the annual report referred to in condition 2.12,</p>	<ul style="list-style-type: none"> • Any artifacts uncovered during the Stage 1 to 4 archaeological work completed in support of the Project are the responsibility of the third-party professional archaeologist under whose licence the artifacts were discovered. The long-term curation of artifacts is a condition of the archaeologist’s professional licence to ensure the safe keeping of archaeological resources. As such, CN does not have care and control of these resources. • CN would be willing to engage with Indigenous groups and/or facilitate discussions between the 	<p>It is CN’s preference that this condition be removed, as the artifacts to which it refers are outside CN’s care and control and CN cannot comply with this condition as drafted. However, if this condition remains, CN suggests the following revision:</p> <p>The Proponent shall <i>work with the qualified archaeological professional to facilitate discussions</i> with the Mississaugas of the Credit First Nation, the Six Nations of the Grand River and the Huron-Wendat Nation about opportunities to return artifacts of Indigenous origin excavated as part of the</p>

#	Condition	Comments/Rationale	Suggested Revisions
	information on any measure implemented as a result of these discussions.	professional archaeologist and Indigenous groups to transfer that responsibility to an Indigenous group, subject to agreement with the Indigenous groups and their willingness and ability to curate these artifacts.	environmental assessment to the communities for preservation and interpretation. The Proponent shall seek consent from the Mississaugas of the Credit First Nation, the Six Nations of the Grand River and the Huron-Wendat Nation before including, as part of the annual report referred to in condition 2.12, information on any measure implemented as a result of these discussions.
12	Effects of the environment on the Designated Project		
12.1	The Proponent shall develop, prior to construction, an infrastructure protection plan that describes how the Proponent shall maintain Designated Project infrastructures secure and in good working order during all phases of the Designated Project and how the Proponent shall restore any damaged infrastructure and prevent future damages, including in the event of an extreme weather event. The Proponent shall submit the plan to the Agency prior to construction. The Proponent shall implement the plan during all phases of the Designated Project. As part the implementation of the plan, the Proponent shall:		
12.1.2	regularly inspect all erosion and sediment control devices installed within the Designated Project Development Area, including during and following rainfall events, and repair any defective or damaged device in a timely manner;	<ul style="list-style-type: none"> • CN notes that it may not be safe to inspect erosion and sediment control devices <i>during</i> rainfall events. 	CN therefore suggests the following revision: “regularly inspect all erosion and sediment control devices installed within the Designated Project Development Area, including during and following rainfall events, and repair any defective or damaged device in a timely manner;”
12.1.4	backfill all open excavations in a timely manner, unless not technically feasible.	<ul style="list-style-type: none"> • CN notes this sub-condition is relevant only to construction, although Condition 12.1 requires the implementation of the infrastructure protection plan during all phases of the Project. 	CN therefore suggests the following revision: " <i>during construction</i> , backfill all open excavations in a timely manner, unless not technically feasible."
13	Independent Environmental Monitor		

#	Condition	Comments/Rationale	Suggested Revisions
13.1	<p>The Proponent shall retain, prior to construction, the services of an independent environmental monitor, who is a qualified individual as it pertains to environmental monitoring in Ontario, to observe, record, and report on the implementation of the conditions set out in this document during all phases of the Designated Project.</p>	<ul style="list-style-type: none"> • The suite of draft conditions pertaining to the independent environmental monitor (IEM) are, as currently drafted, inconsistent with CN's role as the proponent to whom a Decision Statement would be issued (if the Project is approved to proceed) and the party ultimately responsible for ensuring compliance with the conditions of the Decision Statement. CN cannot cede responsibility for ensuring compliance to a third party. • Further, the conditions as drafted are inconsistent with how compliance monitoring and environmental oversight, including of follow-up program implementation, is normally carried out during construction and operation and in the context of other regulatory frameworks. • IEMs are normally retained by proponents during construction to monitor the performance of contractors on the proponent's behalf and to ensure the proponent is aware of potential or actual non-compliance with conditions in a timely manner so that immediate action to prevent or correct non-compliance can be taken. This IEM monitoring role typically includes on-site inspection to ensure mitigation measures are being implemented as required (<i>i.e.</i>, as designed and at the time and in the location and manner specified in the conditions or in other governing documents, such as the Environmental Protection Plan and other environmental management plans). The intent of this monitoring role is, similarly, to ensure the proponent is aware of any circumstance in which mitigation has not been implemented as required so that immediate corrective action can be taken. In fulfilling these 	<p>CN therefore suggests the following revision:</p> <p>“The Proponent shall retain, prior to construction, the services of an independent environmental monitor, who is a qualified individual as it pertains to environmental monitoring in Ontario, to observe, record, and report on the implementation of the conditions set out in this document during all <i>construction</i> phases of the Designated Project.”</p>

#	Condition	Comments/Rationale	Suggested Revisions
		<p>roles, the IEM operates independently of contractors and reports directly to the proponent.</p> <ul style="list-style-type: none"> • IEMs or other qualified professionals (QPs) are also often retained by proponents during construction and operation to oversee the implementation of follow-up programs, including forms of monitoring other than the compliance monitoring noted above, to help determine whether modified or additional mitigation measures are required, and, if so, to help develop them and monitor their implementation as described above. In fulfilling this role, the IEM/QP reports directly to the proponent. • As a facility becomes operational, environmental monitoring normally transitions to proponent-led functions. Specifically in this case, CN has dedicated environmental staff, as well as other staff trained in specific environmental functions, whose role it is to routinely carry out ongoing monitoring and inspection of project activities and components to ensure they are performed and functioning in compliance with design specifications, approval conditions and other regulatory requirements, and other governing documents, such as the facility-specific emergency response plan. The retention of an IEM during the operation phase (other than an IEM/QP in relation to the follow-up programs, as noted above) would be entirely duplicative of this fully integrated environmental oversight function. • CN suggests these distinct environmental oversight roles be articulated more clearly in the conditions. • CN notes that access to the terminal will be restricted for safety and security reasons. The 	

#	Condition	Comments/Rationale	Suggested Revisions
		<p>operational area of the terminal can only be accessed by those who have prior approval, such as truck drivers picking up or dropping off containers. All other non-CN personnel must get permission from the Terminal Manager to access the operational area and/or be accompanied by a CN employee to ensure safety and security measures are enforced. As such, all environmental monitoring or inspections by outside parties must be coordinated with CN and individuals carrying out those functions must get permission from the Terminal Manager before entering the operational area and/or be accompanied by CN employees while on site.</p>	
13.3	<p>The Proponent shall require the independent environmental monitor to prepare reports that include:</p>	<ul style="list-style-type: none"> Further to our comments on Condition 13.1, CN notes that, in all three of these roles, reports are prepared to document any occurrence(s) of non-compliance and corrective actions taken. During construction, the reports are prepared by the IEM and provided to the proponent. During operation, the reports are prepared by the proponent (as CN currently does throughout its network in the context of other regulatory frameworks). With respect to the follow-up programs, during either construction and/or operation, the reports are prepared by the IEM/QP and provided to the proponent. These conditions should accurately reflect these report preparation roles. 	<p>CN therefore suggests the following revision:</p> <p><i>“During construction, the Proponent shall require the independent environmental monitor to prepare, and during operation, the Proponent shall prepare, reports that include:”</i></p>
13.4	<p>The Proponent shall require the independent environmental monitor to provide the reports referred to in condition 13.3 directly to the Agency, the Mississaugas of the Credit First Nation, the Six Nations of the Grand River, the Huron-Wendat Nation and relevant federal authorities, at a regular frequency to be determined in consultation with the</p>	<ul style="list-style-type: none"> Further to our comments on Conditions 13.1 and 13.3 above, reporting obligations of the proponent to the Agency, other regulatory authorities, and other parties, including Indigenous groups, are normally specified in the conditions of a Decision Statement, in other regulatory authorizations, and/or in other legislative or regulatory 	<p>CN therefore suggests the following revisions:</p> <p><i>“The Proponent shall require the independent environmental monitor to provide the reports referred to in condition 13.3 directly to the Agency, the Mississaugas of the Credit First Nation, the Six Nations of the Grand River, the Huron-Wendat</i></p>

#	Condition	Comments/Rationale	Suggested Revisions
	<p>Agency. The Proponent shall require the independent environmental monitor to retain the reports for 15 years following their production.</p>	<p>requirements. It is always the responsibility of the proponent to fulfil any reporting or notification requirements pertaining to its undertaking. CN therefore considers these conditions should clearly place the obligation of determining reporting requirements and fulfilling them, including providing reports to any party, on CN.</p> <ul style="list-style-type: none"> • Direct reporting from the IEM to any other party other than CN is inappropriate as it would undermine the very reason for retaining an IEM in the first place: to ensure the proponent is aware of potential or actual non-compliance with conditions in a timely manner so that immediate action to prevent or correct non-compliance can be taken. Further, it is CN’s responsibility as the proponent to report on its compliance with the conditions of the Decision Statement, just as it is CN’s responsibility throughout its network to fulfil all compliance-related reporting to regulatory authorities. • Further, direct reporting from the IEM to any other party is unnecessary and duplicative. To be clear, the IEM will prepare and provide finalized reports to CN, and CN will, as the responsible entity, provide those reports to the Agency and other specified parties in accordance with the conditions. • IEMs are normally third-party consultants contracted by the proponent and may change from time to time as contracts may expire or be terminated or altered for various reasons. That is, the contractual relationship that CN may have with an IEM is not permanent and may not last for the complete duration of a project phase or follow-up program. This constrains CN’s ability 	<p>Nation and relevant federal authorities, at a regular frequency to be determined in consultation with the Agency. The Proponent shall require the independent environmental monitor to retain the reports for 15 years following their production.”</p>

#	Condition	Comments/Rationale	Suggested Revisions
		<p>to ensure an IEM takes any required action, including preparing, providing, or retaining reports. In contrast, CN is and will remain throughout all phases of the Designated Project the sole entity responsible for ensuring compliance with the conditions of the Decision Statement.</p>	
13.5	<p>The Proponent shall require the independent environmental monitor to consult with the Agency, prior to construction, to determine which type of potential occurrence of non-compliance with any condition set out in this document may need to be reported to the Agency more frequently than the regular reports required pursuant to condition 13.3, including how and when this reporting shall occur based on the likelihood of these types of potential occurrence of non-compliance to cause adverse environmental effects and the magnitude of these effects. If the independent environmental monitor observes any of these potential occurrence(s) of non-compliance during any phase of the Designated Project, the Proponent shall require the independent environmental monitor to report this occurrence directly to the Agency, independently of the regular reports required pursuant to condition 13.3.</p>	<ul style="list-style-type: none"> Further to our comments on Conditions 13.1, 13.3, and 13.4 above, CN must be party to any discussion with the Agency regarding reporting requirements, as it is the party that is ultimately responsible for fulfilling those reporting requirements. 	<p>CN therefore suggests the following revision:</p> <p>“The Proponent shall require the independent environmental monitor to consult with the Agency, prior to construction, to determine which type of potential occurrence of non-compliance with any condition set out in this document may need to be reported to the Agency more frequently than the regular reports required pursuant to condition 13.3, including how and when this reporting shall occur based on the likelihood of these types of potential occurrence of non-compliance to cause adverse environmental effects and the magnitude of these effects. If the independent environmental monitor observes any of these potential occurrence(s) of non-compliance during any <i>construction</i> phase of the Designated Project, <i>and if the Proponent observes any of these potential occurrence(s) of non-compliance during the operation phase of the Designated Project,</i> the Proponent shall require the independent environmental monitor to report this occurrence directly to the Agency, independently of the regular reports required pursuant to condition 13.3.”</p>
		<ul style="list-style-type: none"> Further to our comments on Condition 13.1, CN suggests consideration be given to including an additional condition to accurately reflect the role of an IEM/QP in overseeing the implementation 	<p>CN therefore suggests the following wording for consideration:</p>

#	Condition	Comments/Rationale	Suggested Revisions
		of follow-up programs, in accordance with the parameters of each program developed pursuant to Condition 2.7, separate from the construction compliance monitoring IEM contemplated in Condition 13.1.	<i>“The Proponent shall retain an independent environmental monitor or qualified professional, as identified in each follow-up program, to oversee and report on the implementation of each follow-up program.”</i>
14	Accidents and malfunctions		
14.1	The Proponent shall take all reasonable measures to prevent accidents and malfunctions that may result in adverse environmental effects and mitigate any adverse environmental effect from accidents and malfunctions that does occur. In doing so, the Proponent shall:		
14.1.2	store combustible and flammable materials in designated areas at least six metres away from the Designated Project’s property line and buildings;	<ul style="list-style-type: none"> • CN notes that the Project includes the construction and operation of a maintenance garage, which will require the use and storage within the garage of small volumes of materials that would be considered combustible and flammable (e.g., paint, paint thinner, aerosol cans, oil and grease, wood pallets, etc.). This condition as drafted would preclude such materials from being stored within the garage and is therefore not technically feasible. 	<p>CN therefore suggests the following revision:</p> <p><i>“store bulk quantities of combustible and flammable materials in designated areas at least six metres away from the Designated Project’s property line and buildings;”</i></p>
14.1.3	audit shipments for compliance with safe loading practices; and	<ul style="list-style-type: none"> • CN notes that it is not permitted to open containers and therefore cannot audit shipments as contemplated by this draft condition. • CN notes the recommendation by the Panel (Recommendation 13.1) to conduct such audits appears to be based on an erroneous statement (Joint Review Panel Report, p.265) that CN already conducts such audits. CN does not. • As described during the EA, CN works with shippers to educate them regarding safe loading practices. • CN also has measures in place to inspect and monitor the condition of the exterior of containers 	<p>CN therefore requests this condition to be removed, as it is not technically feasible. As an alternative feasible approach to fulfil the intent of this draft condition, CN suggests the following condition:</p> <p><i>“work with shippers to educate them regarding safe loading practices; and”</i></p>

#	Condition	Comments/Rationale	Suggested Revisions
		and the lift operations between trains and trucks (e.g., to ensure containers are properly secured to the truck chassis or the rail car).	
14.3	The Proponent shall develop, prior to construction and in consultation with the Mississaugas of the Credit First Nation, the Six Nations of the Grand River and relevant authorities, an accident and malfunction response plan in relation to the Designated Project. The accident and malfunction plan shall include:		
14.3.1	a description of the types of accidents and malfunctions that may cause adverse environmental effects during any phase of the Designated Project, including spills and spills of hazardous materials;	<ul style="list-style-type: none"> • CN notes the description of accidents and malfunctions used in Condition 14.6 includes additional specificity that should be noted here for consistency. • See our related comments on Condition 14.6. 	<p>CN suggests the following revision:</p> <p>“a description of the types of accidents and malfunctions that may cause adverse environmental effects during any phase of the Designated Project, including spills and spills of hazardous materials, <i>including accidents and malfunctions occurring within the Designated Project Development Area which may affect area(s) outside of the Designated Project Development Area;</i>”</p>
14.4	The Proponent shall maintain the accident and malfunction response plan referred to in condition 14.3 up-to-date during all phases of the Designated Project so that it remains consistent with the Proponent’s Network Operations Emergency Response Plan. The Proponent shall submit any updated accident and malfunction response plan to the Agency and to the parties being consulted during the development of the plan within 30 days of the plan being updated.	<ul style="list-style-type: none"> • While CN’s network operations emergency response plan is a public document, facility-specific emergency response plans are confidential for safety and security reasons. • Some information contained within facility-specific plans, such as the location and quantities of 'dangerous goods' or the location of emergency evacuation routes, are sensitive and should not be made public. • Facility-specific emergency response plans could be shared with the Agency and other relevant authorities involved in the implementation of such plans, provided the confidentiality of the plans can be assured. 	<p>CN therefore suggests the following revision:</p> <p>“The Proponent shall maintain the accident and malfunction response plan referred to in condition 14.3 up-to-date during all phases of the Designated Project so that it remains consistent with the Proponent’s Network Operations Emergency Response Plan. The Proponent shall submit any updated accident and malfunction response plan to the Agency and to <i>relevant authorities involved in its implementation</i> within 30 days of the plan being updated.”</p>

#	Condition	Comments/Rationale	Suggested Revisions
14.5	In the event of an accident or malfunction with the potential to cause adverse environmental effects, the Proponent shall immediately implement the measures appropriate to the accident or malfunction referred to in condition 14.3.2 and shall:	<ul style="list-style-type: none"> • CN notes that Condition 14.3.1 would require the accident and malfunction response plan to identify the types of accidents and malfunctions that may cause adverse environmental effects. • For clarity and certainty, and so that all conditions regarding accidents and malfunctions are consistent in scope and application, this condition should refer to that plan. 	<p>CN suggests the following revision:</p> <p>“In the event of an accident or malfunction <i>referred to in condition 14.3.1</i>, the Proponent shall immediately implement the measures appropriate to the accident or malfunction referred to in condition 14.3.2 and shall”</p>
14.5.1	implement the communication plan referred to in condition 14.6 as it relates to accidents and malfunctions;		
14.5.2	notify, as soon as possible, the Mississaugas of the Credit First Nation, the Six Nations of the Grand River, potentially affected parties and relevant authorities of the accident or malfunction, and notify the Agency in writing no later than 24 hours following the accident or malfunction. For the notification to the Mississaugas of the Credit First Nation, the Six Nations of the Grand River, potentially affected parties and the Agency, the Proponent shall specify:	<ul style="list-style-type: none"> • CN notes that Condition 14.6 requires the development and implementation of a communication plan for the Mississaugas of the Credit First Nation, the Six Nations of the Grand River, and potentially affected parties. • This condition appears to duplicate and/or potentially conflict with Condition 14.6, in that it would require notification of those groups without recognition that the plan contemplated by Condition 14.6 may establish parameters for that notification. • CN also notes that Condition 14.5.1 assures that the plan contemplated by Condition 14.6 would be implemented in the event of an accident or malfunction. 	<p>To avoid duplication and potential conflict between conditions, CN suggests the following revision:</p> <p>“notify, as soon as possible, <i>and in accordance with the communication plan referred to in condition 14.6</i>, the Mississaugas of the Credit First Nation, the Six Nations of the Grand River, potentially affected parties and relevant authorities of the accident or malfunction, and notify the Agency in writing no later than 24 hours following the accident or malfunction. For the notification to the Mississaugas of the Credit First Nation, the Six Nations of the Grand River, potentially affected parties and the Agency, the Proponent shall specify:”</p>
14.6	The Proponent shall develop, in consultation with the Mississaugas of the Credit First Nation, the Six Nations of the Grand River and potentially affected parties, a communication plan for accidents and malfunctions occurring in relation to the Designated Project, including accidents and malfunctions occurring within the Designated Project Development Area which may affect area(s) outside of the Designated Project Development Area. The	<ul style="list-style-type: none"> • See our comments on Condition 14.5 regarding consistency among all accidents and malfunctions conditions. • See our related comments on Condition 14.3.1. • CN also notes that, in the context of its emergency response planning, it normally communicates with regulatory authorities, local municipalities, and emergency response organizations. 	<p>CN therefore suggests the following revisions:</p> <p>“The Proponent shall develop, in consultation with the Mississaugas of the Credit First Nation, the Six Nations of the Grand River and <i>local emergency response organizations potentially affected parties</i>, a communication plan for <i>the accidents and malfunctions referred to in condition 14.3.1</i>. The Proponent shall develop the communication plan</p>



#	Condition	Comments/Rationale	Suggested Revisions
	Proponent shall develop the communication plan prior to construction and shall implement and keep it up-to-date during all phases of the Designated Project. The plan shall include:	<ul style="list-style-type: none"> Local emergency response organizations in particular, such as fire departments and emergency medical services, have existing protocols for notification of and communication with local residents and other parties that may be potentially affected by an accident or malfunction. As specific potentially affected parties cannot be identified in advance of an accident or malfunction, consulting with local emergency response organizations to ensure CN's plan is consistent with their existing protocols would be most appropriate. 	prior to construction and shall implement and keep it up-to-date during all phases of the Designated Project. The plan shall include:"
15	Schedules		
15.2	The Proponent shall submit to the Agency a schedule outlining all activities required to carry out all phases of the Designated Project no later than 60 days prior to the start of construction. The schedule shall indicate the commencement and estimated completion month(s) and year(s) and duration of each of these activities, including the commencement and estimated completion of each of the three construction phases, the commencement of the operation phase and the commencement of the operation phase at which the Designated Project operates at its full operational capacity.	<ul style="list-style-type: none"> CN notes that the contractor may adjust construction activities into different phases. See our related comments on Condition 4.10.1. 	For consistency with our comments on Condition 4.10.1, CN suggests the following revision: "The Proponent shall submit to the Agency a schedule outlining all activities required to carry out all phases of the Designated Project no later than 60 days prior to the start of construction. The schedule shall indicate the commencement and estimated completion month(s) and year(s) and duration of each of these activities, including the commencement and estimated completion of each of the three construction phases, the commencement of the operation phase and the commencement of the operation phase at which the Designated Project operates at its full operational capacity."
15.3	The Proponent shall submit to the Agency in writing an update to schedules referred to in conditions 15.1 and 15.2 every year no later than October 31.	<ul style="list-style-type: none"> See our related comments on Condition 1.33. 	In light of the suggested revision to Condition 1.33, CN suggests the following alternative wording:

#	Condition	Comments/Rationale	Suggested Revisions
			"The Proponent shall submit to the Agency in writing an update to schedules referred to in conditions 15.1 and 15.2 every year no later than <i>March</i> 31."